

16 SCOB [2022] HCD 25

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 2455 OF 2021

Shohoj Limited-Synesis IT Limited-Vincent Consultancy (Pvt) Limited, JVC (SHOHOZ-SYNESIS-VINCEN JV), through its Constituted Attorney Vincent Consultancy (Pvt.) Limited, represented by its Managing Director.

...Petitioner

Vs.

Central Procurement Technical Unit(CPTU) and others.

...Respondents

Mr. Murad Reza, Senior Advocate with

Mr. Shyamal Kanti Mandal, Advocates

..... For the Petitioner

Mr. A.M. Amin Uddin, learned Attorney General with Mr. Samarendra Nath

Biswas, D.A.G. with Mr. Md. Abul Kalam Khan Daud, A.A.G. with Mrs. Rehana Sultana, A.A.G with Mr. Md. Ali Akbar Khan, A.A.G and Mrs. Nurunnahar, A.A.G.

....For the respondent-government.

Mr. Md. Taherul Islam, Advocate with Mr. Jamilur Rahman Khan, Advocate

..... For the respondent Nos.6-8.

Mr. A.F. Hasan Ariff, Senior Advocate with Mr. Meah Mohammed Kausar Alam, Advocate

..... For the respondent No.9

Heard on 08.12.2021, 12.01.2022 and 19.01.2022. Judgment on 27.01.2022.

Present:

Ms. Justice Farah Mahbub.

And

Mr. Justice S.M. Maniruzzaman

Editors' Note:

A tender was floated for Bangladesh Railway for design, develop, supply, install, commission, operate, maintain and transfer of technology of online based Bangladesh Railway Integrated Ticketing System (BRITS). SHOHOZ-SYNESIS-VINCEN JV a joint venture participated in the tender. The Tender Evaluation Committee (TEC) declared 5(five) tenderers as technically responsive including the present petitioner as well as respondent No.09. Subsequently, the TEC after evaluation of the financial proposals of the technically responsive 5(five) tenderers declared the petitioner as the final responsive tenderer. Accordingly, notification of award was issued. In the meanwhile, the respondent No.9 filed a complaint before the authority concerned under Rule 57(1) and (2) of the Public Procurement Rules, 2008 alleging irregularities and illegalities in the process of evaluation of tender by the TEC. Later, the respondent No.9 filed a complaint before the Review Panel-2 under Rule 57(12) of the same Rules. The petitioner as well as the respondents concerned appeared and contested the said complaint of the respondent No.9. However, upon hearing the respective contending parties the Review Panel 2 allowed Review Petition and recommended for re-tender. The petitioner challenged the decision of the Review Panel-2 before the High Court Division. The High Court Division held that the respondent no. 9 did not bring the complaint within the time prescribed by law and as such the complaint is barred by limitation. It also found that the Review Panel- 2 did not provide any finding as to the point of limitation in its decision which is not maintainable.

Key Words:

Article 102 of the Constitution of the People's Republic of Bangladesh ; Rules 8, 36(3) 56, 57, 60, 98, 102 of the Public Procurement Rules, 2008; Sections 29, 30 of the Public Procurement Act, 2006

Section 29 and 30 of the Public Procurement Act, 2006 read with Rules 56 and 57 of the Public Procurement Rules, 2008:

Section 29 of the Act, 2006 (Act No.24 of 2006), however, provides the right to file complaint to the authority concerned (সংশ্লিষ্ট ত্রয়কারী প্রশাসনিক কর্তৃপক্ষের নিকট) under Section 30 of the said Act on the context as prescribed under Rule 56 of the Rules, 2008. In view of Rule 57(1) of the Rules of 2008 said complaint has to be filed/made within the period as stipulated in Schedule 2 of the said Rules i.e., within 7(seven) calendar days of receipt of knowledge of the complaint which gives rise to the cause of action. In other words, the complainant in his petition of complaint has to disclose the date of cause of action in order to compute the period of limitation. ... (Para 31)

Review Panel has to give specific findings on the point of limitation:

Since in the first complaint dated 30.11.2020 (Annexure-VIII) respondent No.9 did not disclose the date of knowledge giving rise to the cause of action hence, it is barred by limitation. Hence, taking into cognizance of the office letter dated 23.11.2020 by the Review Panel-02, as being introduced by the respondent No.9 for the first time while filing appeal on 28.12.2020 in order to escape limitation without giving specific findings on the first complaint dated 30.11.2020 on point of limitation is also not maintainable. ... (Para 39)

JUDGMENT

Farah Mahbub, J:

1. In this Rule Nisi, issued under Article 102 of the Constitution of the People's Republic of Bangladesh, the respondents have been called upon to show cause as to why the impugned judgment and order dated 13.01.2021 passed by the respondent Nos. 2-4, Review Panel-2, as constituted by the respondent No.1 i.e., Central Procurement Technical Unit(CPTU), Implementation Monitoring and Evaluation Division, in Review Petition No.075/2020 allowing the review and recommending for re-tender(Annexure-F to the writ petition), should not be declared to have been passed without lawful authority and hence, of no legal effect.

2. Pending hearing of the Rule, the operation of the said judgment and order dated 13.01.2021 passed by the respondent Nos. 2-4 was stayed by this Court for a prescribed period.

3. Challenging the said interim order of stay passed in the instant writ petition the respondent No.9, the 3rd lowest tenderer, preferred Civil Petition for Leave to Appeal No.783 of 2021 before the Appellate Division. However, the Hon'ble Judge-in Chamber of the Appellate Division upon hearing the respective contending parties vide order dated 18.03.2021 directed the parties concerned to maintain *status quo*. Ultimately, said Civil Petition for Leave to Appeal was disposed of by the Appellate Division vide order dated 04.04.2021 with direction upon this Court to hear and dispose of the Rule within a prescribed period with continuity of the order of *status quo* granted earlier by the Hon'ble Judge-in chamber. Pursuant to the said order this matter has been heard by this Court and is being disposed of vide this judgment.

4. Facts, in brief, are that the petitioner is a reputed joint venture company who has earned name and fame in home and abroad. All the partners of the said joint venture company participated in various tenders floated by the Government of the People's Republic of Bangladesh and after evaluation by the concerned department they became responsive. Ultimately, on receipt of Notification of Award, issued by the authority concerned, they had successfully completed their contractual obligations with satisfaction of the concerned authority.

5. With a view to adapt to modern technology, to improve facilities for the passengers and as of policy matter, the respondent No.8 floated a tender on behalf of Bangladesh Railway, by publishing Invitation for Tender(IFT) in their official website as well as in "The Daily Jugantor" including other national dailies on 23.01.2020 under Invitation Reference No.54.01.2600.007.18.013.19-45 for design, develop, supply, install, commission, operate, maintain and transfer of technology of online based Bangladesh Railway Integrated Ticketing System(BRITS) by providing all necessary hardware, software, accessories, stationeries and limited managed service. Accordingly, invitation had been made to the aspiring tenderers to participate in the tender process by submitting their respective offer following the instructions as contained in the respective tender documents [(Annexure-A-A(4) respectively].

6. Shohoj Limited, Synesis IT Limited and Vincen Consultancy (Pvt.) Limited entered into a joint venture in the name of SHOHOZ-SYNESIS-VINCEN JV, the petitioner, wherein Shohoj Limited is the leading partner for the purpose of submission of its offer in response to the said invitation for tender and completion of the respective work (Annexure-B). The petitioner being interested to participate in the said tender process accordingly, filed an application to the respondent No.8 along with its illustrative experience profile as well as its brochures in order to prove that the firm is a reputed, reliable ICT enabled service provider. It also submitted authentic documents and different membership certificates in order to show its general experience in IT sector. The petitioner further enclosed completion certificates of certain government and semi-government works showing its capability to accomplish the respective work in connection with the tender in question(Annexure-C).

7. Meanwhile, the Tender Evaluation Committee (in short, TEC) was formed by the authority concerned for evaluation of the tender. Said committee ultimately declared 5(five) tenderers as technically responsive including the present petitioner as well as respondent No.09. Subsequently, the TEC after evaluation of the financial proposals of the aforesaid technically responsive 5(five) tenderers on 18.11.2020, declared the petitioner as the final responsive tenderer. Accordingly, the respondent No.7 being the President of TEC submitted the evaluation report along with the procurement proposal of the said committee to the respondent No.6 vide Memo No. 54.01.2600. 007.18.013.19-135 dated 23.03.2020 [Annexure-3(a) of the affidavit in opposition filed by the respondent Nos.6-8], who on receipt thereof forwarded all relevant documents to the respondent No.5 vide Memo No. 54.01.2600.007.18.013.19-438(Annexure-D-1) dated 23.11.2020 with a view to take necessary steps as per Rule 36(3)(Ka)(2)(Aa) of the Public Procurement Rules, 2008(in short, the Rules,2008). The respondents concerned having agreed with the said proposal had issued notification of award on 03.12.2020 in favour of the petitioner (Annexure-D-3).

8. In the meanwhile, the respondent No.9 filed a complaint before the authority concerned under Rule 57(1) and (2) of the Rules,2008 alleging irregularities and illegalities in the process of evaluation of tender by the TEC. Subsequently, said respondent also filed writ

petition No.9423 of 2020 before this Court challenging Memo No. 54.01.2600.007.18.013.1919-433 dated 22.11.2020 issued by the respondent No.6 declaring the the petitioner as the responsive tenderer with recommendation to award contract in its favour. Having found *prima facie* substance this Court issued a Rule Nisi on 06.12.2020 and also stayed all further proceeding/steps so had been taken pursuant to Memo No. 54.01.2600.007.18.013.1919-433 dated 22.11.2020. Being aggrieved Civil Miscellaneous Petition for Leave to Appeal Nos.795 and 2362 both of 2020 were filed by the Ministry of Railway and the petitioner before the Appellate Division of the Supreme Court of Bangladesh. However, the Appellate Division having found no legal infirmity in the said impugned order dated 06.12.2020 passed in writ petition No. 9423 of 2020 dismissed both the petitions vide order dated 07.01.2021(Annexures-VI and VII of the affidavit in opposition filed by the respondent No.9). Later, on 28.12.2020 the respondent No.9 filed a complaint before the respondent Nos.2-4, the Review Panel-2 under Rule 57(12) of the Rules,2008 regarding irregularities and illegalities in the evaluation process of tender by TEC (Annexures- E and E-1 respectively). The petitioner as well as the respondents concerned appeared and contested the said complaint of the respondent No.9. However, upon hearing the respective contending parties the respondent Nos.2-4 vide the impugned judgment and order dated 13.01.2021 allowed Review Petition No.075/2020 and recommended for re-tender(Annexure-F).

9. Being aggrieved by and dissatisfied with, the petitioner has filed the instant application and obtained the present Rule Nisi.

10. In support of the assertions so made by the petitioner respondent Nos.6-8, the Procuring Entity entered appearance by filing affidavit in opposition stating, *inter alia*, that Bangladesh Railway (in short, BR) in the year 1994 started computer ticketing system. Now, the said ticketing system has been re-named as Centrally Computerized Seat Reservation and Ticketing System. BR has been adopting the said ticketing system by appointing service provider in a systematic tender process in an interval of 5(five) years. However, upon obtaining expert opinion from Bangladesh University of Engineering and Technology (BUET) and Bangladesh Computer Council(BCC) it initiated tender process for appointment of service provider by issuing tender notification on 23.01.2020, which was published on 26.01.2020 in the respective daily newspapers. Subsequently, the authority concerned of BR incorporated 4(four) addendums to the aforesaid tender and fixed 23.03.2020 as the last date for submission of tender document [Annexures- 2,2(a)-2(c) respectively]. Though, 52 tenderers purchased tender notification but ultimately, 9(nine) tenderers submitted their respective offer. However, due to the effect of Covid-19 pandemic the aforementioned last date was extended and ultimately, the whole process of tender was resumed in June, 2020. Meanwhile, a 7(seven) members Tender Evaluation Committee(TEC) was approved by the Secretary, Ministry of Railways as per Rule 8 of the Rules,2008. At the same time, Technical Sub-Committee(TSC) was also constituted by the TEC for aiding and assisting the main committee as per Rule 8(14) of the Rules,2008. In the meanwhile, the period of tender validation period was extended upto 23.11.2020.

11. Subsequently, the TEC submitted their report in due compliance of law after scrutinizing the tender documents submitted by the respective tenderers where they found 5(five) of them as responsive participants. Said technical evaluation report was duly approved on 08.09.2020 by the Director General of BR, respondent No.6. The TEC later on opened the financial proposals of the technically responsive 5(five) tenderers and prepared a joint-evaluation report based on technical as well as financial proposal and sent the same to the respondent No.6 for final evaluation. On 23.11.2020, the purchase proposal was forwarded to

the respondent No.5 by the respondent No.6 for final approval as per Rule 36 of the Rules, 2008. On receipt thereof Bangladesh Railway issued notification of award in favour of the petitioner on 03.12.2020 as per Rule 102 of Rules, 2008 [Annexures- 3, 3(a)-3(c) respectively].

12. Respondent No.9 entered appearance by filing affidavit in opposition controverting the assertions so made by the petitioner as well as the respondent Nos.6-8 stating, *inter alia*, that respondent No.9 is a private company limited by shares, incorporated under the relevant laws of Bangladesh which is engaged in the business of providing Information Technology(in short, IT) services to different international and local government offices/agencies, specially by developing necessary software for web based atomization system with data entry, report generation, data analysis services, online library management with digital archive system, digital ID card management system, store management system, sales management system and also online based integrated ticketing system to its respective customers. Said respondent, however, has been providing services to Bangladesh Railway by operating and maintaining a Centralized Computerized Seat Reservation and Ticketing System(in short, CCSRTS).

13. For adapting modern technology, to improve facilities for the passengers and as of policy matter the authority concerned of BR floated a tender by publishing Invitation for Tender in their official website and in “The Daily Jugantor” and other national dailies on 23.01.2020 under Invitation Reference No. 54.01.2600.007.18.013.19-45 for design, develop, supply, install, commission, operate, maintain and transfer of technology of online based Bangladesh Railway Integrated Ticketing System(in short, BRITS) by providing all necessary hardware, software, accessories, stationeries and limited managed service and thereby invited the interested tenderers to participate in the tender process by submitting their respective offer following the instructions contained in the tender document.

14. With a view to participate in the aforesaid tender, the respondent No.9 procured the tender document from the office of the respondent No.8 and after fulfilling all required formalities submitted the same on 23.03.2020. Thereafter, Tender Evaluation Committee(TEC) was formed for evaluation of the tender and afterwards a TSC was also formed on 02.07.2020 as per Rule 8(14) of Rules,2008 to assist TEC for technical evaluation of the tender documents submitted by the respective tenderers. Subsequently, the TSC upon scrutinizing the technical proposals submitted by 9(nine) tenderers submitted its report on 20.08.2020 opining, *inter alia*, that without submission of proven documents Spectrum-BAL-Electro Craft JV, one of the tenderers, had submitted vendor’s declaration as to its capability to issue 06 million tickets every year. So far the petitioner is concerned said committee observed that the petitioner submitted documents to able to issue approximately 40(forty) lacs tickets in a year against the essential requirement of issuing 50(fifty) lakh ticket per year. Regarding the respondent No.9 the TSC observed that respondent No.9 clearly met all essential requirements of the tender(Annexure-III). With the aforesaid observations, the TSC submitted its report to TEC on 20.08.2020. Further to the said report, respondent No.7 conducted an inquiry as to the authenticity of the certificate/declaration submitted by the respective tenderers against the requirement of issuing 50(fifty) lakh tickets per year. Accordingly, the respondent No.7, with a view to verify the authenticity of those certificates, wrote office letter to the concerned institutions, who issued certificates to the respective tenderers in this regard with request to send e-mail from their own domain within 01.10.2020. On receipt thereof, the respondent No.7 submitted a negative report on 12.10.2020 regarding the petitioner and Spectrum-BAL-Electro Craft JV. Thereafter, the TEC evaluated the technical proposals submitted by the 7(seven) tenderers and declined the proposals of 2(two) others as they failed to comply the essential requirements. The TEC, ignoring the aforesaid

observations of the TSC and the respondent No.8, evaluated the technical proposals of 7(seven) tenderers including the petitioner and Spectrum-BAL-Electro Craft JV and declared 5(five) tenderers as technically responsive.

15. Further, it has been stated that at the time of opening and evaluation of the financial offers of the respective tenderers on 10.11.2020, the TEC only declared the service charge per ticket offered by the tenderers but no information was given to the tenderers regarding the itemwise financial offers. Accordingly, the TEC evaluated the financial proposals of the technically responsive 5(five) tenderers and after evaluation, on 18.11.2020 submitted report in favour of the petitioner.

16. The respondent No.7, being the President of TEC submitted the evaluation report dated 18.11.2020 along with the procurement proposal to the respondent No.6 vide Memo No. 54.01.2600.007. 18.013.19-433 dated 22.11.2020. The respondent No.6 on accepting the aforesaid report and procurement proposal of TEC on 22.11.2020 issued a certificate thereon under Rule 97(8) of the Rules,2008 vide Memo No. 54.01.2600.007.18.013.19-438 dated 23.11.2020 and submitted the procurement proposal vide Memo No. 54.01. 2600. 007. 18.013.19-437 dated 23.11.2020 before the Secretary, Ministry of Railway, respondent No.5 to finalize the same.

17. Meanwhile, pursuant to Memo dated 23.11.2020 issued by the respondent No.6, present respondent contacted the office of the respondent No.8. On 28.11.2020, said respondent came to learn that gross irregularities and illegalities took place during evaluation of the tender by the TEC. Accordingly, the respondent No.9 lodged a complaint on 30.11.2020(Annexure-VIII) before the respondent No.8 under Rule 57(1) and (2) of the Rules,2008 with a prayer to take necessary corrective measures as per Rule 57(3) of the said Rules,2008. Despite receipt of the said complaint, the respondents in an arbitrary manner proceeded with the aforesaid tender process for issuance of Notification of Award and to execute contract in favour of the petitioner, without affording any opportunity to avail and exhaust the remedies available for the said respondent under the Act,2006 and Rules,2008.

18. Finding no other alternative remedy respondent No.9 as petitioner filed writ petition No.9423 of 2020 before this Court whereupon a Rule Nisi was issued vide order dated 07.12.2020 along with an interim order of stay of all further proceedings of the aforesaid tender till 07.01.2021 (Annexure-IV). Challenging the aforesaid interim order passed in writ petition No. 9423 of 2020 the respondent No.5 and others preferred Civil Miscellaneous Petition for Leave to Appeal No.795 of 2020 before the Appellate Division. Upon hearing the respective parties the Hon'ble Judge-in- Chamber of the Appellate Division was pleased to pass "No Order" on 23.12.2020. Subsequently, the respondent No.5 and others as well as the petitioner filed Civil Petition for Leave to Appeal Nos.2431 and 2362 both of 2020 before the Appellate Division. After hearing the respective contending parties the Appellate Division dismissed both the petitions vide order dated 07.01.2021 (Annexures-V-VII respectively).

19. In the meanwhile, the respondent No.8 having not responded to the complaint filed by the respondent No.9 within 5(five) working days from the date of receipt thereof as per Rule 57(4) of the Rules,2008 a complaint was lodged on 07.12.2020(Annexure-IX) by the present respondent before the respondent No.6, being the Head of Procuring Entity, as per Rule 57(5) of the Rules,2008, but there was no reply thereof. Accordingly, the respondent No.9 lodged a complaint on 15.12.2020 before the Secretary, Ministry of Railway, respondent No.5(Annexure-X) as per Rule 57(9) of the Rules,2008, but again there was no response to

the aforesaid complaint. Under the circumstances, respondent No.9 filed appeal before the CPTU on 28.12.2020 (Annexure-XI) with prescribed fess and security deposit following the time frame as prescribed in Schedule-2 of the Rules,2008. Said appeal was heard by the Review Panel No.2, respondent Nos. 2-4 on 06.01.2021 and 10.01.2021 respectively. During the course of hearing, the BR and the petitioner appeared and submitted their respective written submissions. After hearing the parties and on consideration of the written submissions of the respective contending parties, the Review Panel-2, CPTU vide judgment and order dated 13.01.2021 disposed of the appeal with direction for re-tender.

20. Mr. Murad Reza, the learned Senior Advocate appearing on behalf of the petitioner submits that the complaint so made by the respondent No.9 to the tender issuing authority is, in fact, barred by limitation under Rule 57(1)and (2) read with Schedule 2 of the Public Procurement Rules,2008. In support of the said contention he submits that the tender in question was opened on 10.11.2020 and that the respondent No.9 filed complaint under Rule 57(1)and (2) of the said Rules,2008 before the Joint Director General(Operation), BR on 30.11.2020 (Annexure-VIII of the affidavit in opposition filed by respondent No.9) stating, *inter alia*, that they came to know that the petitioner was declared technically responsive on 10.11.2020, the day when the tender was opened. In this regard, he submits that as per Rule 57(1) read with Schedule 2 of the Rules,2008 an aggrieved person has to lodge complaint before the procuring entity within 7(seven) calendar days of knowledge of the event giving rise to cause of action. Respondent No.9, he submits, had knowledge that the petitioner was found technically responsive on 10.11.2020 since such declaration was made in the presence of the representatives of the respective tenderers. But they did not challenge the said findings of the procuring authority within time. Despite the said position of facts the Review Panel-02 has declared that the complaint filed by the respondent No.9 is in due compliance of the Rules,2008.

21. He also submits that as per ITT clause 29.1, following the opening of the tenders until issuance of Notification of Award the tenderer shall, unless requested to provide clarification to its tender or unless necessary for submission of the complaint, communicate with the concerned procuring entity pursuant to Rule 31 of the Rules,2008. In the instant case, he submits, the respondent Nos.9 in its complaint petition stated, *inter alia*, that they came to know about many irregularities in the evaluation of the technical and financial proposals of the petitioner and Spectrum-BAL-Electro Craft JV while carrying out an “*investigation*” at BR on 28.11.2020 without stating what those irregularities are, or the basis for their allegation. While passing the impugned order dated 13.01.2021 the respondent Nos.2-4 has taken into cognizance of the said knowledge of the respondent No.9 about the alleged irregularities in the evaluation of the technical and financial proposals from office letter dated 23.11.2020. At the same time, said authority concerned has given legal mandate to the independent “*investigation*” being conducted by the respondent No.9 without any back up support of law; whereas, in the complaint dated 30.11.2020 filed by the respondent No.9 under Rule 57(1) and (2) the date of opening of the financial proposals i.e., 10.11.2020 has been referred to as the date of cause of action and that in the said complaint there was no reference to the so-called office letter of the respondent No.6 dated 23.11.2020. 22. Thus, he submits, it is evident on the face of record that the complaint dated 30.11.2020 made by the respondent No.9 before the procuring entity/review panel is barred by limitation.

22. He further submits that under the Act of 2006 and the Rules,2008 the Review Panel is only empowered to ‘advise’ and ‘recommend’ the concerned authority. In the instant case, he submits, Review Panel-2 acted *malafide* and in gross violation of Rule 60(3)(ka) (uma) and

(cha) of the Rules,2008 in declaring that the offer of the petitioner and that of the other responsive tenderer i.e. Spectrum Ltd. (who was not made a party in the said review petition) could not be technically as well as financially responsive. In this regard, he goes to submit that the Review Panel-2 has also acted beyond their jurisdiction and stepped into the shoes of the TEC in assessing and evaluating the technical proposal of the petitioner and that of the Spectrum Ltd. in declaring their offer as technically non responsive when the TEC declared them as responsive tenderer. Accordingly, he submits that the impugned judgment and order dated 13.01.2021 passed by the Review Panel-02, respondent Nos.2-4 is liable to be declared to have been passed without lawful authority and hence, is of no legal effect.

23. Mr. A.M. Amin Uddin, the learned Attorney General appearing on behalf of the respondent-government at the very outset submits that despite the fact that the complaint dated 30.11.2020 filed by the respondent No.9 before the procuring entity, the respondent No.8 was barred by limitation under Rule 57(1) read with Schedule-2 of the Rules,2008 the Review Panel-02 taking cognizance of the office letter dated 23.11.2020 issued by the respondent No. 6, being introduced for the first time in the said appeal, has declared the tender process in question illegal without giving any findings on point of limitation. On that score alone, he submits that the impugned judgment and order dated 13.01.2021 passed by the said Review Panel-02 is liable to be knocked down as being not maintainable in the eye of law. In support he has referred the decision of the case of *VA Tech WABAG Ltd. Vs. Bangladesh* reported in *17 BLC(HCD)568*.

24. Mr. Md. Taherul Islam, the learned Advocate appearing for the respondent Nos.6-8 adopts the submissions so have been advanced on behalf of the respondent-government.

25. *Per contra*, Mr. A.F. Hasan Ariff, the learned Senior Advocate appearing on behalf of respondent No.9 submits that once a complaint is filed before the authority concerned, as prescribed under the Act,2006 it becomes an incumbent duty upon the said authority to raise the issue of limitation, if there be any. Since none of the authorities concerned of Bangladesh Railway have raised the said issue hence, now they are estopped from raising objection before the Review Panel-02 on the ground of limitation. Moreso, he goes to submit, since Review Panel-02 is not a *quasi* judicial forum having the trapping of a court but a domestic dispute resolution body constituted under the Act,2006 to give “mycvwik” only on the respective dispute; as such, it is not required to follow the norms and practices which are being followed/observed by the judicial forum. Accordingly, he submits that for not giving detailed observations and findings on the issue of limitation will not go to render the impugned order dated 13.01.2021 nugatory.

26. He also submits that the respondent No.9 filed complaint before the appropriate authorities as prescribed under the Act,2006 and the Rules,2008, being aggrieved by the decision of Bangladesh Railway to find the petitioner as final responsive tenderer, by gross miscalculation and supporting-fabrication of the format of the financial proposal of the tender in question violating the said Act,2006 as well as the Rules,2008. Hence, the concerned respondents have denied the rightful position of the respondent No.9 being the lowest tenderer with highest ranked scores both technically and financially which exhort the cause of action by itself.

27. Lastly, he submits that in the impugned judgment and order dated 13.04.2021 the Review Panel-2, CPTU has categorically found that the petitioner and Spectrum Ltd. are technically and financially non-responsive; that being so, the respondent No.9 became the

responsive tenderer with lowest price and as such, is entitled to get the work order under Rule 98(3)(ka) and Rule 102(13) of the Rules, 2008. Accordingly, he submits that this Rule being devoid of any substance is liable to be discharged.

28. The moot contention of the petitioner is that the complaint so made by the respondent No.9 to the concerned administrative authority of the Procuring Entity under Section 29 of the Public Procurement Act,2006 (in short, Act,2006) read with Rule 57(1) and Schedule 2 of the Public Procurement Rules,2008(in short, Rules, 2008) is barred by limitation, for, in the petition of complaint filed before the respondent No.8, Joint Director General(Operation), Bangladesh Railway(in short, BR) on 30.11.2020 (Annexure-VIII of the affidavit in opposition) the respondent No.9 did not disclose the date of their knowledge of the event giving rise to their cause of action. Moreover, the Review Panel-2 of the CPTU, respondent Nos.2-4 while passing the impugned judgment and order dated 13.01.2021 (Annexure-F to the writ petition) did not make any specific findings on the said objection/issue of limitation being raised categorically both by Bangladesh Railway(the procuring entity) as well as the petitioner, who has been issued Notification of Award on 03.12.2020(Annexure-D-3) by the respondent No.8 having been approved by the competent authority.

29. As appears from record, in response to the invitation for tender under reference No.54.01. 2600.007.18.013.19-45 dated 23.01.2020 for design, develop, supply, install, commission, operate, maintain and transfer of technology of online based Bangladesh Railway Integrated Ticketing System 9(nine) tenderers participated in the tender, out of which 8(eight) were joint venture company including the petitioner and the respondent No.9. On 23.03.2020, the date so fixed for opening of tender the Tender Opening Committee(TOC) “দরপত্র উন্মুক্তকরণ কমিটি” after giving opinion on the technical proposal of the respective tenderers in the presence of their representatives sent the same before the Tender Evaluation Committee (in short, TEC). At the same time the TOC had also sent the financial proposal of those tenderers in sealed condition to the respondent No.7(Annexure-3a of the affidavit in opposition of the respondent Nos.6-8). The TEC after scrutinizing all relevant records in connection with the technical proposal of the respective tenderers found 5(five) tenderers responsive and accordingly, numbers were duly allocated under ITT clause 32.5 of the tender data sheet with certification under Rule 8(13)(kha) of the Rules,2008 dated 08.11. 2020. Subsequent thereto on 10.11.2020 the financial proposal of those technically responsive 5(five) tenderers were opened and evaluated by the TEC in the presence of their representatives with allocation of marks under ITT clause 17. Ultimately, in view of ITT clause 32.4 of Section II: Tender Data Sheet, by aggregating the respective marks(75% under technical evaluation and 25% under financial evaluation) the petitioner scored 78.9497, Spectrum JV 73.8618 and Computer Network System Limited i.e., respondent No.9 scored 69.8400. Accordingly, on conclusion of evaluation of both head the TEC submitted its recommendation on 18.11.2020 with certification under Rule 8(13)(kha) of the Rules, 2008, which was duly forwarded by the respondent No.7 to the respondent No.6 i.e., Director General, Bangladesh Railway vide office memo dated 22.11.2020 for taking necessary steps (Annexure-D to the writ petition). The respondent No.6 with due notification that-“বিবেচ্য ক্রয়/সংগ্রহ চুক্তির প্রস্তাব প্রক্রিয়াকরণে বাংলাদেশ রেলওয়ে কর্তৃক ক্রয়/সংগ্রহ/চুক্তি সংক্রান্ত প্রচলিত আইন ও বিধি/প্রবিধান পুরোপুরি অনুসরণ করা হয়েছে এবং বিবেচ্য প্রস্তাবটি সংশ্লিষ্ট আইন ও বিধি/বিধানের পরিপন্থী নয়। এক্ষেত্রে প্রচলিত নিয়ম নীতির কোন ব্যত্যয় ঘটেনি।

সুপারিশকৃত দরদাতার প্রস্তাবের সাথে Tender ডকুমেন্টের সম্পূর্ণ সামঞ্জস্য রয়েছে। উপস্থাপিত সংশ্লিষ্ট কাগজপত্রের সাথে Tender ডকুমেন্টের সম্পূর্ণ সামঞ্জস্য রয়েছে। সংশ্লিষ্ট কাগজপত্রে বর্ণিত তথ্যাদি সুস্পষ্টভাবে প্রতিফলিত হয়েছে কোন বস্তুনিষ্ঠ/উল্লেখযোগ্য তথ্য অনুল্লিখিত নেই। ” forwarded the records to the Secretary, Ministry of Railway, respondent No.5 on 23.11.2020 for approval(Annexure-D-1). After being approved

by the authority concerned notification of award was duly issued in favour of the petitioner on 03.12.2020 (Annexure-D-3 to the writ petition).

30. From the above, it is apparent that since technical as well as financial proposal of the respective bidders including the petitioner and the respondent No.9 were opened in the presence of their representatives on 23.01.2020 and 10.11.2020 respectively hence, it becomes obvious that on 10.11.2020 they came to learn/ know the offers of all the respective tenderers.

31. Section 29 of the Act, 2006 (Act No.24 of 2006), however, provides the right to file complaint to the authority concerned (সংশ্লিষ্ট ক্রয়কারী প্রশাসনিক কর্তৃপক্ষের নিকট) under Section 30 of the said Act on the context as prescribed under Rule 56 of the Rules, 2008. In view of Rule 57(1) of the Rules of 2008 said complaint has to be filed/made within the period as stipulated in Schedule 2 of the said Rules i.e., within 7(seven) calendar days of receipt of knowledge of the complaint which gives rise to the cause of action. In other words, the complainant in his petition of complaint has to disclose the date of cause of action in order to compute the period of limitation.

32. For ready reference Section 30(1) of the Act, 2006 and Rule 57(1) along with Schedule 2 of the Rules,2008 are quoted below:-

“ ধারা ৩০(১) প্রশাসনিক কর্তৃপক্ষের নিকট অভিযোগ দায়ের, আপীল, ইত্যাদি।- (১) ধারা ২৯ এর অধীন দায়েরতব্য প্রতিটি অভিযোগ সংশ্লিষ্ট ক্রয়কারীর প্রশাসনিক কর্তৃপক্ষের নিকট দায়ের করিতে হইবে এবং উক্তরূপে কোন অভিযোগ দায়ের হইলে, উক্ত কর্তৃপক্ষ উহা বিবেচনাক্রমে নির্ধারিত সময়সীমার মধ্যে উহা নিষ্পত্তি করিবে।”

“ বিধি ৫৭। প্রশাসনিক কর্তৃপক্ষের নিকট অভিযোগ দায়ের, নিষ্পত্তি, ইত্যাদি।- (১) কোন ব্যক্তিকে তফসিল-২ এর বর্ণিত সময়সীমার মধ্যে লিখিতভাবে তাহার অভিযোগ দাখিল করিতে হইবে।”

“তফসিল-২”

	অভিযোগসমূহের প্রশাসনিক পুনরীক্ষণের (Administrative Review) সময়:
৫৭(১)	যে পরিস্থিতির কারণে অভিযোগের উদ্ভব হইয়াছে তদ্বিষয়ে বিষয়ে অবগত হইবার ৭(সাত) পঞ্জিকা দিবসের মধ্যে।

33. In the instant case, the respondent No.9 being aggrieved with the decision of the TEC to declare the petitioner and another as technically responsive filed complaint before the respondent No.8 on 30.11.2020 under Rule 57(1) and (2)(Annexure-VIII); before the respondent Nos.6 on 07.12.2020 under Rule 57(5)(Annexure-IX); and before the respondent No.5 on 15.12.2020 under Rule 57(5) of the Rules, 2008 (Annexure-X) on similar contention stating, *inter alia*, - “গত ২৩ শে জানুয়ারী ২০২০ তারিখে আপনার দপ্তর কর্তৃক টেন্ডার নাম্বার ৫৪.০১.২৬০০.০০৭.১৮.০১৩.১৯-৪৫ এর মাধ্যমে উপরোক্ত বিষয়ের টেন্ডার আহবান করা হয়। যার প্রেক্ষিতে গত ২৩ শে মার্চ ২০২০ তারিখে ০৯ (নয়) টি প্রতিষ্ঠান টেন্ডার সমূহের প্রস্তাব দাখিল করে। তারই ধারাবাহিকতায় গত ১০ই নভেম্বরে ২০২০ তারিখে রেলভবনস্থ সম্মেলন কক্ষে প্রস্তাবিত আর্থিক প্রস্তাবনা উন্মুক্ত করা হয়। যেখানে ক) সহজ লিমিটেড-ভিনসেন লিমিটেড-সিনেসিস লিমিটেড জেভি এবং খ) স্পেকট্রাম-বিজনেস অটোমেশন- ইলেকট্রোট্রেন্ডফট জেভি প্রতিষ্ঠানদ্বয় সমূহকে কারিগরীভাবে রেসপনসিভ বিবেচনা করে প্রতিষ্ঠানদ্বয় এর আর্থিক প্রস্তাব সমূহও উন্মুক্ত করা হয়। উপরোক্ত অত্যাবশ্যকীয় শর্ত অনুযায়ী ক) সহজ লিমিটেড জেভি এবং খ) স্পেকট্রাম ইনিজিনিয়ারিং লিমিটেড জেভি প্রতিষ্ঠানদ্বয় তাদের প্রস্তাবনায় এরূপ কাজের কোন বৈধ অভিজ্ঞতার সনদ প্রদান করতে পারেনি বলে আমরা জানতে পেরেছি, তা সত্ত্বেও ITT 7.1(a) এর শর্ত লঙ্ঘন করে উক্ত প্রতিষ্ঠানদ্বয়কে নন-রেসপনসিভ ঘোষণা না করে অন্যায়ভাবে রেসপনসিভ ঘোষণা করে পরবর্তীতে তাদের আর্থিক প্রস্তাবসমূহ উন্মুক্ত করা হয়েছে। পিপিআর ২০০৮ এর ধারা ৫৭(৩) অনুযায়ী সংশোধনমূলক পরবর্তী ব্যবস্থা গ্রহণ করার জন্য আপনার নিকট অনুরোধ জ্ঞাপন করছি।”

34. In all those petitions, the respondent No.9 has categorically admitted that the financial offers of the respective tenderers including the petitioner and respondent No.9 were opened

by the committee concerned on 10.11.2020 in the presence of their representatives for having been found technically responsive by the TEC on 08.11.2020(Annexure-3b of the affidavit in opposition of the respondent Nos.6-8). It is, thus, apparent that neither in the first complaint dated 30.11.2020 nor in the subsequent complaints so made before the concerned authorities the respondent No.9 had disclosed their date of knowledge giving rise to the cause of action.

35. Vide Section 30(2) of the Act, 2006 the party concerned is entitled to prefer appeal before the Review Panel if he is aggrieved with the decision of the “প্রশাসনিক কর্তৃপক্ষ”, the administrative authority or if said authority fails to give decision within the prescribed period as provided under the Rules,2008.

36. The respondent No.9 filed appeal before the CPTU on 28.12.2020 (Annexure-XI of the affidavit in opposition of the respondent No.9) on similar contention having receipt no decision of the authority concerned within the prescribed period without disclosing the date of knowledge giving rise to cause of action. Said respondent in its appeal before the Chairperson of the Review Panel for the first time gave reference of the office letter dated 23.11.2020 issued by the respondent No.6 stating, *inter alia*:-

“..... এখানে উল্লেখ্য যে, ১০/১১/২০২০ তারিখে দরপত্রের আর্থিক প্রস্তাব সকল দরদাতার সামনে উন্মুক্ত করা হলেও সে সময় শুধুমাত্র টিকেট প্রতি সার্ভিস চার্জের দর প্রকাশ করা হয়, কিন্তু দরপত্রদাতাদের প্রস্তাবিত আর্থিক প্রস্তাবের আইটেমওয়াইজ বিস্তারিত কোন তথ্য প্রদান করা হয় নি। পরবর্তীতে বাংলাদেশ রেলওয়ের মহাপরিচালক কর্তৃক ২৩/১১/২০২০ ইং তারিখের পত্র মারফত পিপিআর-২০০৮ এর বিধি ৯৭(৮) অনুযায়ী দরপত্র প্রস্তাব চূড়ান্ত করিবার জন্য সচিব, রেলপথ মন্ত্রণালয় বরাবর প্রত্যয়ন প্রদান করা হয়। উক্ত প্রত্যয়ন পত্র প্রেরণের পরিপ্রেক্ষিতে ক্রয়কারীর কার্যালয়ে অনুসন্ধান করে দরদাতাদের কারিগরি এবং আর্থিক প্রস্তাব সমূহ এবং এর মূল্যায়নের ব্যাপারে ২৮/১১/২০২০ ইং তারিখে সহজ লিমিটেড জেভি ও স্পেকটাম লিমিটেড জেভির দাখিলকৃত কারিগরি ও আর্থিক প্রস্তাব বিষয়ে বেশ কিছু অনিয়ম এবং অসংগতিমূলক তথ্য পাওয়ায় ৩০/১১/২০২০ ইং তারিখে পিপিএ-২০০৬ এর ধারা-২৯ এবং পিপিআর-২০০৮ এর বিধি ৫৬, ৫৭ অনুযায়ী ক্রয়কারী বরাবর অভিযোগ দাখিল করি।”

37. As has been observed earlier, in the petition of complaint dated 30.11.2020 (Annexure-VIII) there is no reference of the office letter dated 23.11.2020 nor in the other complaints so filed by the respondent No.9 under Rule 57(5) and (7) of the Rules, 2008. The same has been introduced by the respondent No.9 for the first time in the appeal so filed before the Review Panel-02 on 28.12.2020 with a view to cover the period of limitation.

38. Said issue of limitation has been categorically agitated before the Review Panel-02 by the respondent Nos.6-8 as well as the petitioner. The Review Panel-02 while framing specific issues on other objections being raised by the respondent No.9 did not frame specific issue on the period of limitation. Rather, taking into cognizance of the office letter dated 23.11.2020 has ultimately rejected the tender in question without giving any specific findings whatsoever that the first complaint filed under Rule 57(1) and (2) was filed within time or was filed beyond 7(seven) calendar days. Relevant part of the impugned order dated 23.11.2020 is quoted below :

“১ নং বিচার্য বিষয়ের আলোকে আলোচনা/পর্যালোচনা ও সিদ্ধান্ত
বাদী তার আবেদনের সঙ্গে যে সমস্ত কাগজপত্র দাখিল করেছেন তা পর্যালোচনায় দেখা যায় যে, প্রতিপক্ষের অনৈতিক ও পক্ষপাতমূলক কার্যকলাপের প্রেক্ষিতে সমূহ ক্ষতির সম্ভাবনা দেখা দেওয়ায় বাদী পাবলিক প্রকিউরমেন্ট আইন, ২০০৬ এর ধারা এবং পাবলিক প্রকিউরমেন্ট বিধিমালা, ২০০৮ এর বিধি ৫৬(৯)(১১) অনুসরণে অভিযোগ করার অধিকার প্রাপ্ত হয়ে প্রশাসনিক স্তরের প্রাথমিক অবস্থায় ক্রয়কারী কর্তৃপক্ষ (HOPE) বরাবর গত ৩০/১১/২০২০ তারিখে প্রতিকার প্রাপ্তির লক্ষ্যে আবেদন পেশ করেন। অতঃপর ক্রয়কারী কার্যালয় প্রধান ... বরাবর ০৭/১২/২০২০ তারিখে এবং সংশ্লিষ্ট মন্ত্রণালয়ের সচিব বরাবর ১৫/১২/২০২০ তারিখে আবেদন করেছেন দেখা যায়। ইতোমধ্যে বিবাদী পক্ষকে চুক্তি স্বাক্ষর হতে বিরত রাখার জন্য তিনি মহামান্য হাইকোর্ট বিভাগেও রিট পিটিশন আবেদন পেশ করে স্বগিতাদেশ প্রাপ্ত হয়েছেন। পাবলিক প্রকিউরমেন্ট বিধিমালা, ২০০৮ এর বিধি ৫৭(১) হতে (১২) অনুসরণে তিনি গত ২৮/১২/২০২০ তারিখে আপিল আবেদন পেশ করেছেন। এদিকে মহাপরিচালক কর্তৃক বিগত ২৩/১১/২০২০ তারিখে মন্ত্রণালয়ের সচিব বরাবর যে প্রস্তাব পেশ করেছেন তা জানার পর বাদীপক্ষ

তথা প্রশাসনিক স্তরে আবেদন পেশ করতে শুরু করেছেন দেখা যায়। পিপিএ, ২০০৬ এবং পিপিআর, ৫৭ অনুসরণ করেই বাদপক্ষ সমুদয় আবেদন পেশ করেছেন। কাজেই ৩ ও ৪ নং বিবাদীর যুক্তিসমূহ এ ব্যাপারে গ্রহণযোগ্য নয় মর্মে বিবেচনা করে ১ নং বিচার্য বিষয় আবেদনকারীর অনুকূলে বিবেচনা করা হলো।”

39. Be that as it may, since in the first complaint dated 30.11.2020(Annexure-VIII) respondent No.9 did not disclose the date of knowledge giving rise to the cause of action hence, it is barred by limitation. Hence, taking into cognizance of the office letter dated 23.11.2020 by the Review Panel-02, as being introduced by the respondent No.9 for the first time while filing appeal on 28.12.2020 in order to escape limitation without giving specific findings on the first complaint dated 30.11.2020 on point of limitation is also not maintainable.

40. Said observations of ours find support in the decision of the case of *VA Tech WABAG Ltd. Vs. Bangladesh* reported in *17 BLC(HCD)568* where it has been observed by one of the Benches of this Division, *inter alia*:

“The Review Panel in the aforesaid manner has stated that the appeal preferred before the Review Panel has been within time. There is no specific finding that the first complaint filed under Rule 57 of the PPR has been made within time or Project director has committed error of law in disallowing the formal complaint holding that the same was filed beyond 7 calendar days.

41. Since the petitioner of writ petition No.10380 of 2011 admitted in the Annexure-1 that during the opening of the offers the other bidder JLEPCL-DCLJA has been identified to have submitted swift copy of Bank Guarantee from Shanghi Pudong Development Bank, Nanjing Branch, China and advised through Islami Bank Bangladesh Ltd. Kawran Bazar Branch, Dhaka Ref No.001 dated 29.06.2011 ‘without any risk responsibility and engagement on our part and in the formal complaint Annexure-1 as lodged by the VA Tech Wabag Ltd. mentioned the said fact and did not disclose anything so far their alleged date of knowledge is concerned, we have no hesitation to hold that the statement made on 29.08.2011 before the Chairman, BSCIC regarding dated knowledge is a creation of “after thought” only to get escape from limitation.”

[Emphasis given]

42. In view of our above observations and findings, we find it redundant to make observations on the merit of the instant case.

43. Considering the facts and circumstances of the case, observations and findings so made above we find substance in the instant Rule.

44. In the result, the Rule is made absolute.

45. The impugned judgment and order dated 13.01.2021 passed by the respondent Nos. 2-4, Review Panel-2, as constituted by the respondent No.1, Central Procurement Technical Unit(CPTU), Implementation Monitoring and Evaluation Division in Review Petition No.075/2020 allowing the review and recommending for re-tender(Annexure-F to the writ petition), is hereby declared to have been passed without lawful authority and hence, is of no legal effect.

46. There will be no order as to costs.

47. Communicate the judgment and order at once.