

INDIA JURIS

Refusal of judicial review of sale of Green Investment Bank

On 7 April 2017 High court in *R (SDC LLP) v Secretary of State for Business, Energy and Industrial Strategy* [2017] EWHC 771 ruled the sell of Green Investment Bank Plc (the GIB) to a consortium led by Macquarie should not be subject to judicial review.

The GIB is a public limited company, which currently has the Secretary of State for Business, Energy and Industrial Strategy (the Secretary of State) as sole shareholder which was formed to promote and accelerate investment into the UK's "green economy" and to act in accordance with certain statutory "green purposes". A consortium led by Sustainable Development Capital LLP (the claimant) and a consortium led by Macquarie (the Macquarie Consortium) were the two rival bidders. Macquarie was first selected as the government's preferred bidder in October 2016 to offer it a period of exclusivity to finalize negotiations. The same was communicated to the claimant. The claimant challenged the decision. The timing for challenging it became the main issue.

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Breach of public procurement rules - damages and timing of challenge

On 11 Apr 2017, Supreme Court in *Nuclear Decommissioning Authority v Energy Solutions EU Ltd* [2017] UKSC 34 ruled that a public authority's breach must be sufficiently serious under both UK and EU public procurement laws for a disappointed tenderer in a public procurement process to be able to sue the public authority for damages. In the context of a public tender for decommissioning nuclear power plants, the court ruled that there was no obligation on the respondent company to have made a challenge in the standstill period between the notice of the outcome of the tender process and the contract being awarded (to a third party) if it was only seeking damages. The decision thus slightly takes the time pressure off a disappointed tenderer who suspects that there has been a breach of public procurement laws but does not seek to prevent the contract being signed.

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