

**THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 08.07.2009

+ **W.P.(C) 9884/2009**

**DESIGN DIALOGUES INDIA PVT. LTD.**

..... Petitioner

- Versus -

**N.D.M.C.**

..... Respondent

**Advocates who appeared in this case:-**

For the Petitioner : Mr. Rajeeve Mehra, Sr. Advocate with  
Mr. S.S. Sastry, Advocate and Mr. Rishi  
Manchanda, Advocate.

For the Respondent : Ms. Madhu Tewatia, Advocate with  
Ms. Sidhi Arora, Advocate.

**CORAM:-**

**HON'BLE MR. JUSTICE BADAR DURREZ AHMED**

**HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**BADAR DURREZ AHMED, J (oral)**

**CM No. 8129/2009 in W.P.(C) No 9884/2009**

Allowed, subject to just exceptions.

**W.P.(C) No 9884/2009 & CM No. 8128/2009**

This writ petition is concerned with the e-Procurement Tender Notice No. 10065 (this number has been provided by the counsel for the respondent although it does not appear in the documents filed by the petitioner) pertaining to installation of road signages in the NDMC area. The petitioner was initially aggrieved by Clauses 3, 4, 7(a), 15 and 22 of the eligibility criteria prescribed in respect of the said tender. However, in the course of

arguments, the learned counsel for the petitioner has focused mainly on Clauses 4 and 7(a) and incidentally on 7(b) of the said eligibility criteria.

The relevant clauses read as under:-

“4. The Bidder should registered with Excise Department and should enclose Excise Registration Certificate Number along with the Technical Bid.”

XXXX XXXX XXXX XXXX XXX

“7.(a) A current dated authorization certificate issued by the Micro prismatic type IX Retro reflective sheeting manufacturer stating that the contractor is authorized converter. The certificate should be in original and issued by the retro reflective sheeting manufacture or its subsidiary in India. Certificate issued by distributor dealer/power of attorney holder shall be invalid.

(b) A seven year pre qualification warranty, in original, issued by the retro reflective sheeting manufacturer or its subsidiary in India. The warranty shall be for Micro prismatic retro reflective sheeting confirming to ASTM D-4956-07 Type IX sheeting and MORTH performance parameters. The warranty should be in original and jointly signed by the authorized converter.”

With regard to Clause 4, the learned counsel submitted that this condition of being registered with the Excise Department is not at all germane to the tender in question inasmuch as the NDMC is the final consumer and would not benefit in any way by the requirement of Excise Registration from its supplier. The learned counsel for the respondent submits that the requirement of Excise Department Registration is not unreasonable. According to her, this requirement has been inserted to ensure that it is only those persons who have the wherewithal to cater to the requirements of the tender that should participate in the tender. According to her, the parties which are not registered with the Excise Department would be too small to carry out the magnitude of the work involved. The learned counsel for the respondent also submits that since fabrication is involved and a new product comes into being, the question of manufacture

would also arise and for this purpose the Excise Department Registration would be necessary.

With regard to Clause 7(a) of the said eligibility criteria, the learned counsel for the petitioner submitted that there are only two manufacturers of Micro prismatic type IX Retro reflective sheeting. They are “3M” and “Avery Dennison”. Both these manufacturers are located abroad. He submits that in any event, any party who responds to the tender in question would be sourcing the material from either of the two manufacturers. Therefore, the condition of requiring the bidder to be an authorized converter is wholly unconnected with the object that is sought to be achieved. According to him, the object that is sought to be achieved is that Micro prismatic type IX Retro reflective sheeting be used. In so far as the certificate of quality is concerned, the learned counsel for the petitioner submitted that even though the petitioner is not an authorized converter, it would, undoubtedly, be necessary to get that certificate from the manufacturer, i.e. either “3M” or “Avery Dennison”. It was also his contention that the challenge to this Clause is also on the ground that it narrows down the field of potential bidders and therefore would tend to be detrimental to the respondents in the sense that a lower bid price would not be available to them. It is for these reasons that he submits that the said Clause is unreasonable and arbitrary and therefore should be deleted from the eligibility criteria. Incidentally, he also challenged Clause 7(b) of the eligibility criteria but, only to the limited extent that the expression “authorized converter” is used therein. Insofar as the other stipulations with regard to pre-qualification warranty are concerned, he, however, had no

grievance.

The learned counsel appearing on behalf of the respondent submitted that Clause 7(a) which stipulated the requirement of the bidder being an authorized converter of the sheet manufacturer is not at all unreasonable. She submitted that these road signages are required to be completed within a period of 10 months and require specialized handling and is a highly technical job. She submitted that there is no doubt that there are only two manufacturers of Micro prismatic type IX Retro reflective sheeting and that they are “3M” and “Avery Dennison”. She, however, submitted that both these manufacturers have supplied lists of their authorized converters. According to her, there are a total of 49 authorized converters. She stated that she would be filing an affidavit to this effect in the course of the day. She also clarified on instructions from Mr. K.L. Suri, Executive Engineer, Roads-II (Civil), N.D.M.C. who is present in court, that the requirement of the bidder being an authorized converter is in relation to Micro prismatic Retro reflective sheeting not necessarily restricted to ‘Type IX’. Although, the product that has to be supplied and used is Micro prismatic type IX Retro reflective sheeting of the specifications indicated in Clause 7(b) itself. Thus, according to the learned counsel for the respondent, there is nothing unreasonable or arbitrary about Clause 7(a) inasmuch as there are a large number of authorized converters who would all be entitled to participate in the said tender.

Having heard the counsel for the parties, we are of the view that insofar as Clause 4 is concerned, the reasoning adopted by the learned counsel for the respondent is clear and acceptable. There is nothing

unreasonable or arbitrary about the insistence on registration with the Excise Department. The work itself is estimated at about Rs. 3,29,66,350/- and therefore the need of the contractor having substantial infra-structure. This is also coupled with the fact that there is the issue of whether the activity itself amounts to manufacture and therefore registration with the Excise Department would, in any event, be necessary.

With regard to Clause 7(a) of the eligibility criteria, we find that the requirement of the bidder being an authorized converter is also neither unreasonable nor arbitrary. There are certain stipulations or conditions which are necessary before a person is designated by the manufacturer as an authorized converter. Those stipulations include experience in fabricating sign boards for making road signs, apart from a few other conditions. It is clear that the requirement of setting up these road signages is of a technical nature and requires specialized handling. The condition of requiring an authorized converter to submit the bid is a step in the direction of selecting the best. This not only ensures quality but also reliability and the capability of the bidder for completing the work on time. We are, therefore, of the view that there is nothing unreasonable or arbitrary about Clause 7(a) of the eligibility criteria. Consequently, the incidental objection to Clause 7(b) which uses the expression “authorized converter” would also not stand in the way.

For these reasons, we are not inclined to entertain this writ petition and the same alongwith CM No. 8128/2009 stand dismissed.

**BADAR DURREZ AHMED, J**

**VEENA BIRBAL, J**

**JULY 08, 2009**  
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