

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

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Judgment reserved on: 04th December, 2015

Judgment delivered on: 25th February, 2016

+ **WP(C) 5371/2015**

M/S ROOTS INDUSTRIES INDIA LTD.

.... Petitioner

Versus

**M/S AIRPORTS AUTHORITY OF INDIA
& ORS.**

.... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr C. Harishankar, Sr. Advocate with Mr Subhash Chandra, Mr Jagdish N. and Mr P. K. Singh

For the Respondents : Mr Neeraj Kishan Kaul, ASG with Mr Ashwarya Sinha for R-1.
Mr Sandeep Sethi, Sr Advocate with Mr Kundan K. Mishra, Mr Ajay Kumar, Mr Sandeep Das and Mr Vipin Tyagi for R-2.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

J U D G M E N T

SANJEEV SACHDEVA, J

1. The petitioner has filed the present petition seeking quashing of the decisions dated 10.04.2015 of the Respondent No. 1 Airports Authority of India rejecting the petitioners bid submitted in response to NIT No. 01/2015 for supply and maintenance of 7700 trolleys and the award thereof to Respondent No. 2 Gilco Exports Limited and further for a mandamus to award the tender to the petitioner.

2. On 14.01.2015, Respondent No. 1 issued e-Tender NIT No 01/2015, inviting bids for contract of manufacturing, supply and comprehensive maintenance of 7700 passenger baggage trolleys (stainless steel -type) for various airports.

3. The Petitioner (Roots Industries Ltd) along with Respondent 2 (M/s Gilco Exports Limited) and Respondent No. 3 (M/s Malke Radiators Private Limited) submitted their bids. All the three bidders were found to be qualified at the Pre-Qualification stage. The technical bids were opened on 05.03.2015. The technical bids were evaluated by the Technical Evaluation Committee (TEC for short), comprising of DGM (Tech) and AGM (Tech).

4. On 12.03.2015, after evaluation of the technical bids and the sample trolleys, the TEC submitted its report observing as under:

"1. M/s Gilco Exports Ltd., Chandigarh: The party is meeting all the requirement of technical specifications and has submitted the entire required document in support of technical bid documents, except the following points:

- a) Thread guards have not been provided on wheels*
- b) Fasteners are not tamper proof.*

2. M/s Malke Radiators Pvt. Ltd., Chandigarh: The party is meeting all the requirement of technical specifications and has submitted the entire required document in support of technical bid documents. except the following points:

- a) Thread guards have not been provided on wheels.*
- b) Fasteners are not tamper proof.*

3. M/ s Roots Industries India Ltd., Coimbatore: The party is meeting all the requirement of technical specifications and has submitted the-entire required document in

support of technical bid documents, except the following points:

- a) Trolley wheel guard requires improvement for protection from load touching the rear wheel.*
- b) Sharp edges are found on advertisement panel plates, identification plate and number plate. Quality of weld joint needs improvement. Pipe bending is not proper, kinks have been observed on pipe bending points.”*

5. The GM (Tech) found the report to be unsatisfactory and on 17.03.2015, he sought clarifications on the report. He noted that the observation of the TEC that the samples provided by Gilco Exports Ltd. and Malke Radiators Pvt. Ltd. did not have thread guard, was not correct, as upon inspection it was found that the samples were fitted with thread guards. He opined that the two bidders fulfilled the technical criterion. He further stated in his note that the deficiencies in the sample submitted by the Petitioner could only be cured upon restructuring of the whole sample and therefore the same could not be considered fit for consideration. The GM(Tech) in his report observed as under:

“Since all the parties who have participated in this tender have been qualified for opening of the technical bids after evaluation of the sample trolleys submitted, the following queries which has been raised by the undersigned in the preceding notes are required to be clarified :-

- 1. As per the technical evaluation report of sample trolleys, the 'non complying' element indicated at sl. no. 13 & 23 are common for M/s. Malke Radiators Pvt. Ltd., and M/s. Gilco Exports ltd. Both the firms are meeting entire technical requirement sought in above referred sl. nos. except the remarks made by TEC at sl. no. 13, indicating that the wheels are found without thread guards, which is*

new element indicated in this tender. The undersigned, while inspecting the sample trolleys, found that the sample trolleys submitted by these two bidders are having fitted with wheels with suitable 2 'Z' type bearings(dust protected) with thread guards in blue colour, which is stationary and not moving with the axel, thus fulfilling the purpose.

- 2. Regarding non-compliance at sl. no. 23, the TEC has indicated as good workmanship, welding and surface finish with are marks that the "fasteners are not tamper proof" without completing the para as per tender, which states in the technical specification that "all used fasteners are to be tamper proof and should not have protrude in loading platform of trolley of movement area of baggage." The undersigned while inspecting the sample trolleys found that the trolleys supplied by these two firms are having all fasteners of tamper proof having self-locking arrangement (even double check-nut system) which cannot be tampered without using special tool and normal torque. Such system has been accepted in the past and used in this kind of equipment. It is also to be noted that in none of the areas where fasteners are used are protruding in loading platform of trolleys or movement areas of the baggage. These two firms are the only bidders who have used fasteners provided with suitable locking arrangement in order to prevent the loosening I tampering of fasteners during usage.*
- 3. Regarding the sample trolleys submitted by M/s. Roots Industries India Ltd., the TEC's observations as per the report regarding non-compliance of the specifications are indicated at sl. no. 15,17,18,19,20,21 & 23. But, on the final recommendations of TEC, the "non-complying" remarks are concluded with 2 points indicated under sl. no. 15 & 23 only. It is obvious that all the specifications under non-compliance criteria are equally important in terms of tender specifications stipulating the standard of the workmanship which can be improved and witnessed*

after award of the contract but the non-complying remarks under sl.no. 15,17 &23 are of critical nature which can only be achieved, if, the design of the trolley is changed and the bidder has the infrastructure ensuring high standards of workmanship and latest technology for welding and fabrication work.

4. *In fact, it is observed that the trolleys submitted by M/s. Roots Industries Ltd. are not having the self-locking arrangements to the fasteners used but the TEC on the contrary has cleared it, indicating as fasteners are found to be tamper proof. In view of the above and the urgency of the project, the clarifications as sought above may please be submitted on priority so that the proposal is processed further.”*

6. The GM (Tech) submitted another note before the ED (Tech) on 20.03.2015, with regard to the evaluation of the trolleys. He opined that the sample submitted by petitioner was not meeting the tender requirement and it would be prudent to clear the sample of the Respondent No. 2 and 3. The note of 20.03.2015 read as under:

“A. The clarifications made by TEC on the evaluation of the sample trolleys are raising some apprehension on the issues. As per the recommendations of TEC, M/s Malke Radiators Pvt. Ltd and M/s Gilco Exports Ltd have been qualified for further processing with a remark that the wheels of the sample trolleys submitted by these bidders are found without thread guard and the fasteners used on the sample trolleys are not tamper proof. It is, therefore, clarified that:-

Wheels with Thread Guard

"Thread guard" is basically a piece of metal/plastic covering the wheel to prevent dirt, threads and other debris from attaching to the wheels. These thread guards can be in any shape and size and provided to give symmetrical design as

per the make of the wheel manufacturer. Since the bearings used in these trolleys are sealed and dust protected the role of the thread guard becomes to prevent threads and other debris from attaching to the wheels and give a symmetrical look to the wheels (various types of wheel covers on, cars are the examples) which is achieved by these bidders as clarified at NP-12.

Fasteners are found not tamper proof

The fasteners used in passenger baggage trolleys are mainly on the wheel axis and mountings of the front swivel castor assemblies, globally. The fasteners used for wheels are either the self-locking arrangement of nuts and bolts or using Allen key screws. As per tender's specifications, the self-locking nuts are preferred, vis-à-vis, the Allen key screws which has not got the provision of the self locking system. In either cases, the same can be tampered by using spanners or Allen keys which is generally available in a tool kit.

In fact, the term tamper proof fasteners as per the NIT refers to the fasteners used to mount the front swivel castor assembly on to the platform. In case of these two bidders, the full proof system of the fastener is ensured by providing double check nut and locking system, and the same cannot be tampered easily as it requires a great deal of efforts and special tools for dismantling the assembly. The !remarks of TEC is contradictory to the facts.

In view of the above, it is clear that the sample trolley submitted by M/s Malke Radiators Pvt. Ltd and M/s Gilco Exports Ltd are fully meeting the NIT requirement.

B. As per the recommendations of TEC, M/s Roots India Pvt. Ltd has also been qualified for the further processing with remarks for various non-complying issues which are clarified as under-

1. TEC's Evaluation Report Para 15 stipulates that both the rear wheels of the sample trolley requires improvement for

protection from load touching the rear wheels. This is a critical deficiency and cannot be improved by just providing wheel guards as recommended by the TEC. The problem can only be rectified by making a change in the design of the trolley in order to shift the wheels away from the load platform area.

2. *As per TEC's Evaluation Report Para 17, the sample trolley is without electro polishing. This is also a critical problem which implies that the bidder may not have the required infrastructure and technology to do the electro polishing.*

3. *The sample trolley is fitted with the advertising panels, identification plate and number plate having the sharp edges. TEC has recorded that the same has caused the injuries to the person handling the trolley during the evaluation.*

4. *TEC's Evaluation Report Para 23 stipulates that high standard of workmanship and use of latest technology in welding and fabrication work is missing as sample trolley's pipe bendings are improper, resulting development of kinks on its bending points. This is also a critical point which justifies that the bidder has not got the technology as per the tender conditions.*

5. *The TEC in its Evaluation Report Para 23 has indicated that the fasteners are found to be tamper proof. In fact, unlike the other two bidders, M/s Roots India Pvt. Ltd has not provided the fasteners tamper proof as the Allen key screws provided on the wheel ends are without locking system and the front swivel cast or assembly is not at all tamper proof as the same can be easily dismantled by unscrewing the Allen key screw on the top of the swivel castor assembly within no time.*

In view of the above, it is clear that the sample trolley submitted by M/s Roots India Pvt. Ltd is not meeting the tender requirement. The critical deviations as brought out by the TEC can be witnessed any time. Though, the tender specs. this time is made quite generic by incorporating the suggestions

(changes) accorded by ED (Tech), vis-à-vis, the tender specs. already available in order to have more participation. It would have been better to give an opportunity to the bidders whose sample trolley is likely to be rejected on the minor deviations as per the then ED (Ops)'s letter dated 2nd Feb'2007 on the specifications but seeing the critical nature of defects/deviations and the quality of trolley produced by M/s Roots India Pvt. Ltd one has to take a serious call at this stage itself, whether the bidder has the potential to make and supply the trolleys as per the tender than to clear it for further processing and struggle to get the supply after award of the contract.

It would be, therefore, prudent to clear the sample trolleys of M/s Malke Radiators Pvt Ltd and M/s Gilco Exports Ltd for further processing of the bids and seek a clarifications from the TEC for recommending to clear the sample trolley of M/s Roots India Pvt. Ltd inspite of having critical defects/deviations.

Submitted for the perusal of ED (Tech).”

7. The petitioner on 28.03.2015 wrote a letter to the Respondent No. 1 stating, “We would like to know the points of improvement you are expecting us to carry out in the samples of Passenger Baggage Trolley already submitted to you for your kind perusal & approval. We are prepared to carry out all the points of improvement to be proposed by you at no extra cost , other than the prices already offered by us. On receipt of your Mail/Letter to this effect we shall proceed further on the matter &. arrange to submit fresh samples duly Incorporating all the points of improvement to be proposed by you. We assure you of our best services at all time” admitting thereby that the sample submitted by it were non compliant to the specifications provided by the Respondent. This was followed by another letter on 02.04.2015

wherein the petitioner stated that it had redesigned its trolleys and rectified all deficiencies as highlighted and the samples were ready at their factory. The petitioner sought an opportunity to submit fresh samples for evaluation.

8. To verify the inputs of the GM (Tech), on 06.04.2015 ED (Tech) constituted a committee comprising of GM (Tech) Central E&M workshop, GM (Ops), Jt. GM (Tech)- I and Jt. GM (Tech)-II to examine the original samples submitted by the bidders. Upon re-examination of the samples the TEC submitted its report on 09.04.2015 stating as under:

“As per the observations of the committee, sample trolleys of M/s Malke Radiators Pvt. Ltd. and M/s Gilco Exports Ltd., are found to be as per the technical requirement of NIT technical specifications. The sample trolleys of Mis Roots Industries India Ltd., are not as per NIT technical requirement in terms of NIT technical specification para 3,8,13,15,17,18,19,20,21,22 and 23.

In the report, GM (Ops) has stated that he has checked only practical aspect of sample trolleys in presence of other committee members and his comments are as under:

100 Kg. (approx.) weights were placed on the sample trolleys and there were manoeuvred on cemented and bitumen surfaces. The sample trolleys of Mis Roots Industries Ltd., has better manoeuvring then other two sample trolleys. The points i.e. sl. No. 1 to 23 are technical in nature in above mentioned report and were not checked by him.

As the sample trolleys of M/s Malke Radiators Pvt. Ltd and M/s Gilco Exports Ltd., have been found to be as per the technical requirement of NIT technical specifications, by the committee, the financial bids of these two parties may be opened for further processing of tender. M/s Roots Industries India ltd., may be informed about non eligibility for opening of

financial bids as per the report of the technical evaluation committee.

Submitted please.”

9. The report of the technical committee was approved by the competent authority on 09.04.2015 and the financial bid of the two qualified bidders was opened. The financial bid of Respondent No. 2 was accepted on 13.05.2015.

10. In the meantime, on 12.5.2015, the petitioner once again reiterated its stand that it had redesigned its trolleys and rectified all deficiencies as highlighted and the samples were ready at their factory. It further sought an opportunity to submit fresh samples for evaluation. This request was not acceded to.

11. On 14.05.2015, the Letter of Intent was issued in favour of Respondent No. 2 followed by a purchase order on 18.05.2015. On 17.06.2015, Respondent No. 2 furnished the Bank Guarantee in terms of the NIT and the contract executed. Though the agreement was executed on 17.06.2015, it is stated, inadvertently because of a typographical mistake, it bears the dated 09.06.2015. In our view, nothing turns on it and has no material bearing on the facts of the present case. On 22.06.2015 and 06.07.2015, it is stated that the Respondent No. 2 in compliance to the contractual terms dispatched the trolleys, which were duly verified and the payments have been made.

12. The above facts clearly show that the technical committee has duly verified the samples originally submitted by the bidders and the samples of

the respondents 2 and 3 were found to be technically compliant. The sample submitted by the petitioner was found to be defective and not technically compliant. The TEC found that the sample of the petitioner did not conform to 11 technical specification paragraphs. The petitioner through its various correspondences admitted that the sample submitted by it was deficient and not in conformity with the technical specifications. It sought for an opportunity to submit fresh corrected samples. This opportunity was not granted and rightly so as the same was not so stipulated by the terms of the NIT.

13. Since the sample submitted by the petitioner was not technically compliant and the samples submitted by the respondent 2 and 3 were found to be technically compliant, the rejection of the bid of the petitioner and the acceptance of the bid of the respondent No. 2 cannot be faulted.

14. In view of the above, we find no merit in the petition. The petition is dismissed, leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

FEBRUARY 25, 2016
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