IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.1185 of 2015

Date of decision: 02.03.2015

M/s Karnail Singh & Company .....Petitioner

Versus

State of Haryana and others ....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Anil Kshetarpal, Senior Advocate with
Mr. Piyush Aggarwal, Advocate for the petitioner.

Mr. Vishal Garg, Addl. AG, Haryana.

Mr. Rajesh Arora, Advocate for respondent No. 4.

HEMANT GUPTA, J. (ORAL)

The challenge in the present writ petition is to an order dated 06.02.2015 whereby the tender submitted by the petitioner was rejected for the reason that it is not accompanied by the amount of earnest money.

By virtue of public notice dated 13.01.2015 (Annexure P-1), sealed tenders for transportation of food grains/stock articles by road from one center to another within State of Haryana were invited from the willing tenderers. The tenders were invited in two parts - technical bid and price bid. One of the conditions of tender was that the technical bid be accompanied by an earnest money. It was specifically mentioned in Clause 2 that technical bid, not accompanied with the requisite amount of earnest money will be rejected. Relevant Clause reads as under:

> "1. The tenderer shall give his tender premium on his basic rates. The tender forms and detailed terms and conditions may be obtained from the office of DFSC/all agencies. The tenderers will give their offer in two envelopes. The first envelop containing technical and professional qualification with documentary evidence and various documents, as mentioned below, will be submitted in support of financial soundness and experience of work etc. alongwith EMD. Envelop should be super scribed/marked as TECHNICAL BID. The second envelope containing schedule of rates with quoted percentage rates in respect of transportation should be super scribed/marked as PRICE BID. The sealed envelopes containing 'Technical Bid and Price Bid' should be put in another sealed envelop which should be super scribed/marked as "Tender for regular transportation of ______ Mandi" and it should be addressed to the DFSC.
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> xxx xxx xxx
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> Note:- Price Bid would be opened in case of tenderers qualify the technical bid.
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> 2. Each Technical Bid must be accompanied by an earnest money i.e. 5% of the total cost of contract of Previous year, of mandi for which tender is to be submitted, in the shape of demand draft drawn in favour of the DFSC of Kurukshetra. Technical Bid not accompanied with the requisite amount of earnest money will be rejected. The amount of earnest money of the unsuccessful tenderer will be refunded within 5 working days of Finalization of the tender except L2 and L3. The earnest money of L2 and L3 will be refunded within 15 days."

Admittedly, technical bid of the petitioner was not accompanied by the earnest money. As per the petitioner, the same was by mistake placed in envelop containing price bid. Learned counsel for the petitioner relies upon the judgments of Hon'ble the Supreme Court reported as **Poddar Steel Corporation versus Ganesh Engineering Works and others** (1991) 3 SCC 273, **Rashmi Metaliks Limited and another versus Kolkata Metropolitan Development Authority and others** (2013) 10 SCC 95 and that of Bombay High Court reported as **Agarwal Roadlines Pvt. Ltd. versus Indian Oil Corporation Ltd. and others** 2003 (1) Maharashtra Law Journal 610 to contend that such mistake should have been allowed to be corrected in public interest.

We have heard learned counsel for the parties and find no merits in the present writ petition. Technical bid of the petitioner was required to be accompanied by an earnest money. The same was admittedly not in the envelope meant for the technical bid.

As per the tender condition, price bid was to be opened only in case tenderer qualifies the technical bid. In terms of the tender condition, the price bid could not be opened to find out that the petitioner has furnished the earnest money. It is an envelope of the technical bid, which is to accompany the amount of earnest money. Thus, technical bid of the petitioner has been rightly rejected in the absence of amount of earnest money.

In ***Poddar Steel Corporation's*** case (supra), the demand draft as per the tendered condition was to be drawn on State Bank of India but it was drawn on Union Bank of India. The Union Bank of India has verified the authenticity of the instrument. It was in these circumstances it was held that the payment on Union Bank of India must be treated as sufficient for the purpose of achieving the object of conditions of tender.

In ***Rashmi Metaliks Limited's*** case (supra) one of the conditions of the tender was submission of the latest income tax return along with the bid. The Court found that the income tax return would have assumed the character of an essential term if one of the qualifications was either the gross income or the net income on which tax was attracted, which was found to be not made out. It was, in such a situation, it was held that it was not justified disqualification. Both the judgments are not applicable in the present case and the benefit of these judgments cannot be extended to the facts of the present case where the technical bid was not accompanied by the earnest money.

In ***Agarwal Roadlines Pvt. Ltd.'s*** case (supra), the Indian Oil Corporation (IOC) and Hindustan Petroleum Corporation Ltd. (HPCL) and Bharat Petroleum Corporation Ltd. (BPCL) invited tenders for award of separate contracts region wise for transportation of bulk LPG by road in tank trucks. It appears that advertisement was published to invite sealed tenders under two bid system i.e. Credential bid and Price bid. The petitioner submitted one tender to IOC and the other to BPCL but the demand draft meant for HPCL was annexed with the tender submitted to BPCL and vice versa. In these circumstances, the court found that it was only technical irregularity and did not in the facts of the case could be said to violate the essential conditions of the tender notice.

In the present case, technical bid was not accompanied with the amount of earnest money and, therefore, the price bid could not have been entertained in the absence of the essential condition of the deposit of earnest money.

Consequently, we do not find any merit in the present writ petition. The same is dismissed as there is no infirmity or irregularity in the order dated 06.02.2015.

(HEMANT GUPTA)
JUDGE

March 02, 2015 **(LISA GILL)**
rts **JUDGE**