

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.22046 of 2015
Date of decision:05.11.2015

M/s ECS Engineering Pvt. Ltd.

... Petitioner

versus

PSEB & another

... Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Pushpinder Kaushal, Advocate for the petitioner.

Mr. J.S. Puri, Additional Advocate General, Punjab.

...

S.J. VAZIFDAR, ACTING CHIEF JUSTICE.

The petitioner has challenged the rejection of its tender.

Clauses 1, 13 and 14 of the notice inviting tenders read as under:

“1. Earnest money (in the form of Bank cheque/Demand Draft) in favour of Chief Engineer, Punjab School Education Board, S.A.S.Nagar (Mohali), payable at S.A.S. Nagar (Mohali). Tenders received without earnest money shall not be considered.

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xxx

xxx

13. Bidder shall upload/send copy of the all papers i.e. Receipt of Earnest money, Enlistment Certificate, PAN/Sale TAX (VAT) Number and other certificates as required in the eligibility criteria, without which the tenders would not be opened and would be rejected.

14. The original Bank Cheque/Demand Draft of Earnest Money, copy of Enlistment Certificate (if applicable); PAN Card; VAT No. and other certificates as required in the eligibility criteria should be deposited with the undersigned before the opening of bid as given in the above table. If the bidder fails to deposit the above documents before the opening of bid, the bid shall be rejected and the bidder shall be disqualified and debarred for a period of six months for submitting bids for the works in PSEB.”

2. The petitioner did not pay the earnest money as required namely by a bank cheque/demand draft. The petitioner made payment by challan deposited directly in the account. Moreover, the payment was in favour of the Secretary and not in favour of the Chief Engineer as required. Clause 1 makes it clear that the tender was not to be considered. The authorities cannot be blamed for rejecting the tender as not complying with the condition of the e-tendering notice. Even upon opening the bid, they would have seen it without earnest money.

3. The petitioner submitted its bid online. However, the respondents required hard copies also to be deposited. The petitioner admittedly had not deposited hard copies. This requirement is contained in Clauses 13 and 14.

4. Clause 14 indicates that this was an essential condition. The consequence of failing to comply with such a condition was that their bid was to be rejected. In view of the language of clause 14, it is difficult to accept the petitioner's contention that its technical bid ought to be accepted as it was not an essential term and condition. Normally, where the consequence provides for the rejection the presumption is that an condition is the essential one.

5. The Writ Petition is, therefore, dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

05.11.2015
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