IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24335 of 2014

Date of decision:9.4.2015

M/s Aggarwal Associates ….Petitioner

VERSUS

Union of India and others .....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Chankya Pandit, Advocate for the petitioner.

Mr. Paul S. Saini, Advocate for respondents No.2 and 4.

Mr. Daldeep Singh, Advocate for respondent No.5.

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HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to the grant of contract for running and maintenance of Guest House at Indian Oil Corporation Limited (for short 'IOCL') complex Panipat including indoor and outdoor catering services at Panipat Refinery Township.

The petitioner is a proprietorship firm of Shashi Aggarwal. The petitioner is the existing contractor for running and maintenance of the Guest House. On 11.08.2014, an advertisement was published inviting tenders for running and maintenance of Guest House at Panipat at Natha Cracker Complex, IOCL, as well as indoor and outdoor catering service at Panipat Refinery Township. The tender was to be opened on 01.09.2014 and the earnest money was to be deposited till the closing time i.e. 3:00 PM. The tenders of two parties alone were received, out of which one was of the petitioner. Since there was poor participation, the time for submission of tender was extended to 09.09.2014 but again only two tenderers deposited the earnest money including one by the petitioner within the time fixed.

The grievance of the petitioner is that subsequently, the respondents accepted the earnest money of three parties i.e. M/s Shashi Caterers, Upvan Restaurants and Gourmet Eatables Private Limited after the deadline for accepting the earnest money was over. Therefore, the consideration of the tenderers who have submitted earnest money after the cut-off period should have been rejected out rightly but the respondents have given contract to one M/s Shashi Caterers, though the earnest money was received after the cut-off period.

In reply, the stand of the respondent-Corporation is that the bids for the subject work were to be submitted in two parts. The first part was to be uploaded along with scanned copy of the demand draft for an amount of Rs.2,43,450/- towards earnest money drawn in favour of Indian Oil Corporation Ltd., Panipat Refinery. Till 01.09.2014 only two bids were received out of which one was of the petitioner. Thereafter, the time was extended for submission of the bids till 2:30 PM on 09.09.2014. By that time four bidders had uploaded scanned copy of their earnest money instruments which were issued prior to the bid submission date and time and one bidder uploaded certificate seeking exemption from furnishing of earnest money being a small scale industry permissible under the advertisement but only one draft of earnest money was received in physical form till the extended date and time of the receipt. The remaining three instruments of earnest money were in transit.

Therefore, the Corporation had two options, either to extend the bid submission date or to accept the earnest money instruments which were already in transit. Since sufficient bids were received till the extended bid submission date i.e. 09.09.2014, accepting the instruments of earnest money which were already in transit and were uploaded on the tender website prior to the dead line was considered as the most appropriate option. Consequently, the bids were examined and awarded in accordance with law.

Learned counsel for the petitioner has vehemently argued that acceptance of instruments of earnest money after the cut-off period is against the tender conditions and therefore, the action of the respondents in awarding contract to M/s Shashi Catering Services is not tenable in law.

We have heard learned counsel for the parties and find no patent illegality or manifest injustice in the process adopted by the respondents. Though, the physical instrument of earnest money was required to be received by the Corporation on or before 3:00 PM on 09.09.2014 but the fact remains that the scanned copy of the instruments of earnest money were uploaded prior to the said time and date. The original instrument of the earnest money alone has been accepted after the cut-off time which is reasonable keeping in view the fact that the date for submission of the tender was extended earlier. The decision making process so as to accept the physical instrument of earnest money cannot be said to be unjustified as it was one of the options available with the respondents.

Since the decision making process is reasonable and plausible, we do not find that such process can be said to be unwarranted warranting interference in the equitable writ jurisdiction of this Court.

Consequently, the present writ petition is dismissed.

(HEMANT GUPTA)
JUDGE

APRIL 9, 2015 **(LISA GILL)**
'D. Gulati' **JUDGE**