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

% Judgment delivered on: 24.02.2015

+ **W.P.(C) 6695/2014 & CM Appl. 15887/2014**

M/S. APEX ENCON PROJECTS PVT. LTD. DELHI Petitioners

Versus

**DIRECTOR GENERAL MARRIED ACCOMMODATION PROJECT
DELHI & ANR** Respondents

Advocates who appeared in this case:

For the Petitioner : Mr T.V.L.Narasimha Rao and Mr Anurag Jain, Advocates.

For the Respondents : Mr Jasmeet Singh CGSC with Mr Kritik, Advocate for UOI.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. An invitation for pre-qualification of contractors was taken out by the Director General Married Accommodation Project (MAP), Ministry of Defence, Government of India, by virtue of notice dated 29.05.2014. It may be pointed out that several works were specified in the said invitation. The present petition is concerned with the work listed at serial No.6. The same is as under: -

PQ No : DGMAP/PH-II/NOTICE NO.1 OF 2014-15

Sl No.	Name of Work	Estimated cost of work (in Crore)	Value of satisfactorily completed similar works	Average yearly Financial Turnover (in Crore)	Solvency (in Crore)	Period of Competition
1	2	3	4	5	6	7
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6	COMPLETION OF BALANCE WORKS FOR CONSTRUCTION OF DWELLING UNITS INCLUDING ALLIED SERVICES FOR OFFICERS, JCOs & ORS AT HYDERABAD (AF), DUNDIGAL, SECUNDERABAD, BEGUMPET (AF), BIDAR, HAKIMPET (AF)	155.00	One work of 93 Crore or two works of 62.00 Crore each or three works of 46.50 Crore each	46.50	46.50	25 Months
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2. It may be pointed out that only the balance work, as indicated in serial No.6, is the subject matter of the present petition. Earlier, the contract for construction of the dwelling units had been awarded to the petitioner. That contract was cancelled by the respondent under condition Nos 46, 47 and 48 of the general conditions of contract. The petitioner's bid has been rejected on the ground— "03 MAP contracts cancelled earlier". The 03 MAP Contracts mentioned above relate to the works at

Bhatinda, Jabalpur and Secunderabad. The present tender pertains to the balance work at Secunderabad.

3. It is the case of the respondent that since the petitioner did not successfully complete the work at Secunderabad, it is ineligible to participate in the subject tender, which is for the balance work left unfinished by the petitioner.

4. The learned counsel for the respondent drew our attention to the first proviso to Clause 60 (Arbitration) of the general conditions of contract of the earlier contract. The said proviso reads as under:-

“Provided that in the event of abandonment of the works or cancellation of the Contract under Condition Nos. 46,47 and 48 hereof, such reference shall not take place until alternative arrangements have been finalised by the Government to get the works completed by or through any other Contractor or Contractors or Agency or Agencies.”

5. In reference to the above provision, the learned counsel for the respondent submitted that it was absolutely clear that if the work was abandoned or cancelled under any of the Condition Nos. 46, 47 and 48, the arbitration was not to take place unless and until alternative arrangements had been finalized to get the works completed by or through any other contractor or contractors or agency or agencies. It was,

therefore, submitted that the petitioner as well as the respondent were well aware that in case the contract remains unfinished, the respondent has the right to get it completed by someone else, other than the petitioner. In this background, it was submitted that the petitioner could not participate in the tender for the balance work, because the understanding under the original contract was that the work would be completed through some other contractor.

6. The learned counsel for the petitioner, however, submitted that there is no disqualification of the petitioner in the current notice inviting the qualification bid. He submitted that in an earlier round, when the very same balance work was tendered on 20.12.2013, there was a specific Clause (Clause 2.7), which enabled the respondents to disqualify a party from participating in the tender, if that party had a record of negative performance, such as abandoning the work or not completing the contract etc. The learned counsel for the petitioner submitted that a clause similar to Clause 2.7 in the earlier round was not included in the subject tender and, therefore, it meant that the petitioner did not suffer from any disqualification.

7. We have considered the arguments advanced by the counsel for the parties and we find that the initial contract, that was awarded for the Secunderabad Project to the petitioner, was left incomplete by the petitioner. We are not going into the merits of that matter because that would be the subject matter of arbitration. We are making it clear that we have not expressed any opinion, as to whether the petitioner was in the wrong or the respondent was in the wrong. The fact of the matter is that the earlier contract clearly stipulated that if the same was cancelled or abandoned under any of the condition Nos. 46, 47 and 48, the respondent would have the right to get the works completed through some other contractor.

8. This according to us, excluded the petitioner from being considered for completing the balance work. The present tender is with regard to the balance work. Therefore, it was well within the rights of the respondent to reject the bid of the present petitioner on account of the fact that it is with regard to the Secunderabad Project, which had been cancelled and it was only the balance work, which was the subject matter of the present tender.

9. In these circumstances, the writ petition does not have any merit, the same is dismissed and the interim order is vacated. There shall be no order as to costs.

BADAR DURREZ AHMED, J

FEBRUARY 24, 2015
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SANJEEV SACHDEVA, J

