

**IN THE HIGH COURT OF PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

CA-CWP-1-2017 (O&M)
DATE OF DECISION: 14.02.2017.

RADEX STATIONARY INDIA PVT. LTD. ... Appellant

V.

UNION OF INDIA AND ORS. ... Respondents.

**CORAM: HON'BLE THE CHIEF JUSTICE, S.J. VAZIFDAR
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. Vishal Mittal, Advocate
for the appellant.

Mr. Vikas Chatrath, Advocate for U.T.

Mr. Rajan Bansal, Advocate for respondent No.3.

Mr. D.K. Singhal, Advocate for respondent No.4.

ANUPINDER SINGH GREWAL, J.

This appeal is directed against the order of the Single Bench dated 17.01.2017 whereby the writ petition challenging the rejection of the appellant's bid, has been dismissed.

2. The respondent No.2 had invited tenders for supply of photocopier papers FS, A4 and A3. The last date for submission of the bid was 27.10.2016. The appellant is stated to have submitted his bid online within time but the physical documents were submitted by him on 28.10.2016. The financial bid was opened on 19.12.2016 whereby the appellant's bid was rejected due to its late physical submission.

3. Learned counsel for the appellant has contended that the appellant had submitted the bid within time i.e. before 11:30 a.m. on 27.10.2016. He has

further contended that the technical bid was opened on 11:00 a.m. on 28.10.2016 in the presence of the representative of the appellant and therefore, its rejection at the time of opening of the financial bid on 19.12.2016 on account of late submission is arbitrary and deserves to be set aside.

4. Per contra, learned counsel for the respondents has contended that the appellant had not furnished the documents in support of his bid on time and therefore, his bid has been rightly rejected as the submission of the documents along with e-tender was necessary for consideration of the bid.

5. We have heard learned counsel for the parties.

6. It would be apposite to set out the relevant terms and conditions of the tender as well as its time schedule. Condition 1 of Special Instructions For e-Tenderers reads as under:-

“No e-Tender, unless it is accompanied by an Earnest money of Rs.5,70,000/- in favour of Controller, Printing and Stationary, U.T., Chandigarh, will be considered. The Earnest Money can be deposited in the form of Account Payee Demand Draft, Fixed Deposit Receipt from a Commercial Bank, Bank Guarantee from Commercial Bank payable at Chandigarh mentioned in the e-Tender Form: e-Tenders will be accompanied by the requisite free samples in sufficient quantity for test and preservation. Tenders without samples and requisite amount of Earnest Money will not be acceptable and no responsive will be made for the submission of the same, e-Tender received late i.e. after the due date and time shall be rejected. Earnest money should be deposited in the name of the firm, not in the name of any individual/person.”

7. Condition 1(i) of Terms and Conditions of e-Tender mentioning the relevant dates reads as under:-

“1(i) Last date and time as well as Samples/Earnest Money Deposit for the supply of the articles shown in the attached Schedules (P&S Form No.8) for 2016-17 will be received by the Controller, Printing and Stationery, U.T., Chandigarh upto 11.30 a.m. on 27-10-2016 e-Tenders received thereafter will not be considered.

Samples must be sent under a quoted/submitted sealed cover, securely fastened, sealed with a distinctive device and conspicuously marked, “Samples for the supply of Paper item”. These must be addressed to the Controller, Printing and Stationery, U.T., Chandigarh, and not by name. When a Samples are sent by post its cover must be enclosed in a strong cover. The outer cover will be addressed to the Controller, Printing and Stationery, U.T., Chandigarh and will not bear any indication of the contents. Technical Bid of the Firms whose Earnest Money received in this office will be opened on 28-10-2016 at 11.00 A.M. in the presence of tenderers or representatives who may care to attend. The opening of Price Bid will be intimated to all eligible bidders separately.”

8. The time schedule is set out hereunder:-

“PRINTING AND STATIONERY DEPARTMENT, UNION TERRITORY, CHANDIGARH

e-Tender Notice

e-Tender is hereby invited from the manufactures/suppliers of Photocopier Paper for the year 2016-17:-

Sl. No.	Description	Date	Time
<i>I.</i>	<i>Date of Publishing Date</i>	<i>Start: 25-05-2016</i>	<i>13.00</i>
<i>II.</i>	<i>Downloading of Document</i>	<i>Start: 25-05-2016</i>	<i>14.00</i>
<i>III.</i>	<i>Seeking of Clarification</i>	<i>Start: 07-10-2016</i> <i>End: 27-10-2016</i>	<i>14.00</i> <i>11.00</i>
<i>IV.</i>	<i>Submission of Bid</i>	<i>Start: 07-10-2016</i> <i>End: 27-10-2016</i>	<i>15.00</i> <i>11.30</i>
<i>V.</i>	<i>Opening of Technical Bid</i>	<i>28-10-2016</i>	<i>11.00</i>
<i>VI.</i>	<i>Opening of Price Bid of only eligible Technically qualified bidder</i>	<i>To be intimated later on after evaluating the Technical Bid.</i>	

1. Bid documents can be loaded from the website <http://etenders.chd.nic.in/>
2. All other terms and conditions, instructions to bidders regarding e-tendering process etc. May kindly be seen from Detailed Notice Inviting Tenders (DNIT) available on the above noted website of Chandigarh Administration. The undersigned reserve the right to reject any or all tenders without assigning any reason(s).
3. The tenderers should read terms and conditions, instructions (DNIT) carefully before filling the Price Bid(BOQ).
4. E-Tenders without digital signatures will not be accepted by the Electronic Tendering System.

Sd/-
Controller, Printing and Stationery
U.T., Chandigarh”

9. It is borne out from the conjoint reading of condition 1 of Special Instructions for e-Tenderers as well as condition 1(i) of terms and conditions of e-tender that the e-tenders have to be submitted along with the requisite free samples by 11:30 a.m. on 27.10.2016. The submission of e-tender alone would not be sufficient as samples and earnest money also had to be furnished by 11:30 a.m. on 27.10.2016. In the writ petition, it has been averred by the appellant that he had submitted the tender document on 27.10.2016 within time. However, in the grounds of appeal, it is stated that the appellant had submitted the tender documents online at 05:36 p.m. on 26.10.2016 and a hard copy thereof was submitted to respondents on 27.10.2016 within time. Even assuming that the appellant had submitted the e-tender within time but there is no document on record which would suggest that the appellant submitted the supporting documents on time as well. The appellant has laid immense emphasis on the presence of its representative at 11:00 a.m. on 28.10.2016 when the technical bid

was opened. The mere presence of its representative on 28.10.2016 at the time of opening of the technical bid would not help the case of the appellant as he had not submitted the samples and other documents physically by 11:30 a.m. on 27.10.2016. It is, in fact, evident from the representation of the appellant sent to respondent No.1 on 19.12.2016 (Annexure P-6) that the only ground taken therein is that its representative was present in the office of the Controller when the technical bids were opened at 11:00 a.m. on 28.10.2016. There is no averment whatsoever, in support of the appellant’s case that the documents were also submitted by 11:30 a.m. on 27.10.2016.

10. Therefore, the action of the respondents in rejecting the bid of the appellant due to late submission of the tender documents cannot be said to be arbitrary or unreasonable warranting interference while exercising the jurisdiction under Article 226 of the Constitution of India.

11. Consequently, we do not find any merit in the appeal which stands dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

14.02.2017
SwarnjitS

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>