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

\+ **W.P.(C) 5882/2016 & CM 24190/2016, 32901/2016**

SUDHIR POWER LTD. ..... Petitioner

Through Mr Piyush Kaushik and Mr Sarat Chandra, Advocates.

versus

CENTRAL ORGANISATION FOR MODERNISATION OF WORKSHOPS & ORS. ..... Respondents

Through Mr Sarbjit Sharma and Ms Sunaina Pasricha, Advocates for R1.
Ms Shruti Aggarwal, Advocate for R2.
Mr Jaswinder Singh and Ms Shipra Shukla, Advocates for R3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 08.08.2017

1. The petitioner has filed the present petition, *inter alia*, impugning the decision of respondent no.1 in awarding the contract for purchase of DG Sets to respondent no.2 (being purchase order dated 17.06.2016).

2. The petitioner is essentially aggrieved by the decision of respondent no.1 to treat respondent no.2 as L-1 in respect of the supply order dated 17.06.2016.

3. The learned counsel for the petitioner has referred to a table indicating the comparative prices offered by the petitioner and other bidders for the DG

Sets. He pointed out that the basic price offered by the petitioner was ₹26,16,300/-. However, the respondent no.2 had offered ₹29,43,337 /- which was higher than the price offered by the petitioner. He submitted that respondent no.2 had stolen a march over the petitioner as it had indicated that no taxes (service tax) on installation and commission charges (hereafter 'I&C Charges') were applicable whereas the petitioner had correctly computed the service tax on I&C Charges as ₹38,812/-. Resultantly, respondent no.2's I&C Charges were lower by ₹38,812/-.

4. Respondent no.1 had placed the purchase order without calling for bids on respondent no.2 based on rates approved by the Directorate General of Supplies & Disposal (DGS&D) rates as per the list available on DGS&D website.

5. In view of the same, the decision of respondent no.1 in placing the purchase order on respondent no.2 cannot be faulted.

6. In the aforesaid context, the petitioner had also raised a controversy in respect of the rates as published by DGS&D. Accordingly, by an order dated 22.08.2016, DGS&D was impleaded as respondent no.3. An affidavit has been filed on behalf of DGS&D, which clearly indicates that certain bidders had asked for extra payment on account of service tax on I&C Charges in their offer. In view of the various bids, it was decided that those bidders who had not demanded extra payment of service tax on I&C Charges would not be eligible to claim the same. Accordingly, a counter offer was also made to all bidders who had asked for extra payment on account of service tax on I&C Charges.

7. Finally, it was decided that those bidders who had not asked for extra payment on account of service tax would not be paid any such charges and the price for I&C in their case was worked out by deducting the service tax element computed at 12.95%. This clearly explains why the I&C Charges quoted by respondent no.2 are lower.

8. In view of the above, it is clear that whereas the petitioner would be entitled to claim service tax on I&C Charges, respondent no.2 is not entitled to do so and consequentially I&C Charges payable to respondent no.2 are, in fact, lower than those quoted by the petitioner.

9. In view of the above, the present petition is unmerited. Since it is clear that the price payable to respondent no.2 for DG Sets would be lower than the petitioner, there is no infirmity in respondent no.1's decision to place the order for DG Sets on respondent no.2 instead of the petitioner.

10. Accordingly, the petition is dismissed. No orders as to costs.

VIBHU BAKHRU, J

AUGUST 08, 2017
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