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

% **DECIDED ON: 09.05.2017**

+ W.P. (C) 3839/2017

OMNIA TECHNOLOGIES PVT LTD Petitioner
Through: Mr. Abdhesh Chaudhary with Mr. Yogesh
Keshari, Advocates.

Versus
UNION OF INDIA AND ORS Respondents
Through: Mr. Rajiv Nayar, Sr. Advocate with Mr.
Sarojanand Jha, Ms. Naina Dubey and Ms. Biswajit
Choudhary, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

S.RAVINDRA BHAT, J.(ORAL)

1. The petitioner complains of unfair and arbitrary treatment by the DMICDC Logistics Data Services Ltd. (hereafter referred to as "DMICDC").
2. The brief facts are that the DMICDC published a notice inviting tenders on 22.02.2017 for supply of RFID tags for Logistics Data Bank ("LDB") projects at its various sites. The petitioner was initially aggrieved by the Centre's tender conditions since it felt that the conditions were arbitrary and had the effect of excluding its tender offer. It, therefore, approached this Court by filing W.P.(C) 2385/2017. On 15.03.2017, the petitioner withdrew the said proceedings. Before this Court, the grievance articulated by the petitioner is twofold, i.e., that DMICDC being a public agency and, therefore, bound by the standards of fairness as well as provisions contained in Part-III of the

Constitution of India, was expected to adopt a fair procedure which it did not. In this regard, it is contended that the DMICDC did not care to respond and intimate to the petitioner that its tender was not responsive and could not be processed but that upon receiving a letter, a back dated letter was issued on 25.03.2017, stating that it was not successful and that someone else was successful.

3. The gist of the petitioner's grievance - rather its challenge in this proceedings to the award of tender and the process leading up to it, is twofold. It is firstly contended that the condition that the bidders had to be the prime suppliers with eligibility criteria of past supply "to minimum of two different government projects (from the Infrastructure and/or Transportation sector and/or defense) in India covering a total of at least 5 RFID projects globally in the last 3 years" is unfair. It is submitted that the petitioner has considerable exports in the sector since it has in the past supplied bulk orders to various projects. In this regard, it is urged that the petitioner had engaged in the tender furnished by it that it had successfully tendered and completed for three large overseas projects besides five other projects in India which included four similar projects (which was treated as one) and in the past FASTAG project, providing RFID tags to various banking companies. It was submitted that the restrictive conditions and the nature of evaluation indicated in the NIT, do not to exclude Indian vendors and that all bidders deemed responsive are foreign suppliers. Learned counsel submitted that the exclusionary condition, i.e., the eligibility of having supplied at least two different government projects has in fact resulted in arbitrariness because even though it is able to secure considerable high marks in the volume of transactions in the past nevertheless it stands ousted in the process.

4. At the stage of preliminary hearing today, the DMICDC was present and represented; it has also produced the original file. The Court had the benefit of perusing the original file. The tender condition which the petitioner really objects to is the one which mandates that the prospective supplier should have been successful in securing various orders. Besides, qualitative and quantitative conditions, the condition that is objected to is that the tenderer should have supplied a minimum of two different government projects, from the Infrastructure and/or Transportation sector and/or defense sector. There are two aspects which this Court has to consider here. The first that the tender condition in this case was perceived to be exclusionary and, therefore, the petitioner felt it to be arbitrary, he, therefore, approaches this Court before the technical evaluation was in fact done. It is not disputed that the condition with which the petitioner complains of today was in fact the subject matter of challenge in W.P.(C) 2385/2017 which it withdrew. Furthermore, it proceeded to submit its bid knowing fully well about the conditions. In the light of these facts it is no longer open to it to urge that such condition should not be insisted upon.

5. Apart from this preclusion, the Court noticed that the other bidders whose offers were evaluated in fact fulfilled the condition of having supplied in the past to two different government projects from the infrastructure, or transportation sector in defense. That the petitioner was unable to fulfil that criteria since it had secured infrastructure supply in the transport sector only one kind of project, i.e. towards banking sector *ipso facto* cannot be considered arbitrary. Here the tender conditions are nuanced; they clearly spelt that “delivery to a single client through multiple POs for a particular project will be considered as single project” also is a condition that the agency had stipulated.

6. It is quite evident from the first condition which the petitioner is aggrieved by essentially (with respect to supply to minimum of two different government projects) that the public agency wished to look at diverse nature of the bidders' capabilities in volumes of supplies in different segments of three particular centres, *per se*, such consideration cannot be held irrational or arbitrary.

7. Besides, the interpretation of a tender condition by the public agency is capable of judicial intervention under Article 226 of the Constitution of India only if it is illegal, procedurally indefensible or so unreasonable that no reasonable person can arrive at such a conclusion. The record here clearly shows that all other rival bidders had in fact furnished bids that complied with the minimum two government projects in different segment condition. The petitioner's bid was also evaluated from the same stand point.

8. In the circumstances that the outcome was not to the petitioner's liking cannot persuade the Court to hold that the award of contract to the eligible third party is arbitrary and discriminatory as to warrant exercise of discretion in writ proceedings.

9. The writ petition is unmerited and consequently dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**YOGESH KHANNA
(JUDGE)**

MAY 09, 2017
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