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

+ W.P.(C) 7484/2017 & CM No. 30825/2017

M/S ELGIN ELECTRONICS PVT LTD Petitioner

Through: Mr Rakesh Khanna, Mr Udit Kumar
and Ms Nabhanya Sharma,
Advocates.

versus

UNION OF INDIA & ORS Respondents

Through: Mr Ajay Digpaul, CGSC with Ms
Mohita, Advocates with Mr Rajendra
Prasad, Executive Engg. Electrical,
PWD and Mr S. Kumar, SE, CPWD
for R-1 & 2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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28.08.2017

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 14.08.2017 (hereafter 'the impugned order') whereby the petitioner's earnest money of ₹11,74,733/- was forfeited and further the petitioner was excluded from participating in the contract in question. It is the petitioner's case that the said action is unreasonable and arbitrary as the petitioner cannot be faulted for not complying with the tender conditions. It is claimed that the approved vendor had defaulted in not abiding by his quotation and this was beyond the control of the petitioner.

2. Respondent no.2 had called for a "SECRET" tender for supply, installation testing and commissioning of Video Conferencing facilities at a

specified location. The petitioner was invited to collect the tender documents and submit the bid. The estimated cost as indicated in the tender documents was ₹5,87,36,628/-. The last date for submission of tender was 03.08.2017.

3. In terms of the aforesaid invitation to tender, bidders were required to source the equipment from specified approved vendors. Pursuant to the same, the petitioner approached the nominated vendors for the specified items - item nos.1 and 3 of the bill of quantities - and in response to the same, the petitioner received the price quotations from them.

4. Respondent no. 3., Trend Micro India Pvt. Ltd. (hereafter "TMIPL"), was the approved vendor for item no. 2, *"Trend Micro tipping point 2200T+1 Gbps Premium support 1yr Renew"*, and quoted a price of ₹1,87,00,000/-, *albeit* for three years. On examining the quotations received from TMIPL, the petitioner noticed that price quoted was for three years instead for one year. The petitioner asserts that it reverted to TMIPL and on a telephonic conversation, TMIPL indicated a price of ₹67,00,000/-.

5. It is stated that the petitioner submitted its tender along with the earnest money on the basis of the price of ₹67,00,000/- which was allegedly confirmed by TMIPL on telephone.

6. The petitioner's predicament is that TMIPL has resiled from his telephonic confirmation and is now denying that any such commitment was made. Thus, the petitioner is not in a position to supply item no. 2 at the price bid by it.

7. In the aforesaid circumstances, the petitioner also requested the

respondents to alter the tender conditions, which was denied.

8. In terms of the tender conditions, the petitioner was to deposit a work performance guarantee for a sum of ₹27,40,000/- within a period of seven days of respondent no.2 accepting the bid. The bids were opened on 03.08.2017 and the Letter of Award was issued by respondent no. 2 in favour of the petitioner on 04.08.2017.

9. Concededly, the petitioner failed to deposit the work performance guarantee in view of the issue that had arisen between the petitioner and TMIPL.

10. On the petitioner failing to comply with the tender conditions, respondent no.2 passed the impugned order forfeiting the earnest money of ₹11,74,733/-.

11. Although, the petitioner may have a *bonafide* reason for being unable to fulfil his commitment but the fact that he has failed to stand by his bid, is not disputed. Respondent no. 2 is not concerned with the transaction between the petitioner and the vendors from which the equipment/items were to be sourced; as far as respondent no. 2 is concerned, the petitioner has defaulted in complying with the tender conditions and that is sufficient to warrant the issuance of the impugned order.

12. Thus, even if the petitioner's case that TMIPL had resiled from his commitment is accepted, the Court cannot grant the relief sought. It is clear that there is no infirmity with the impugned order passed by respondent no.2 and, accordingly, no interference is warranted with the said order.

13. The petition is, accordingly, dismissed.

14. It is clarified that nothing stated herein should be read as an expression of opinion (*prima facie* or otherwise) as to the controversy between the petitioner and TMIPL. It is further clarified that nothing stated in the present order would preclude the petitioner from pursuing its remedies against TMIPL.

VIBHU BAKHRU, J

AUGUST 28, 2017
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