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

\+ W.P.(C) 9959/2017

PALTECH COOLING TOWERS AND EQUIPMENTS LTD. AND ANR. ..... Petitioners

Through: Mr Sudipta Basu, Ms Sakshi Mahley and Ms Harshita Kumar, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr Bhagwan Swarup Shukla, CGSC with Mr Kamaldeep and Mr Suraj Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **10.11.2017**

<u>VIBHU BAKHRU, J</u>

1. The petitioners have filed the present petition, *inter alia,* claiming that the petitioner no.1 - a micro/small enterprise - is entitled to award of the contract in question, pursuant to its bid as the price quoted by the petitioner no.1 was within the price band of L-1 + 15%.

2. Briefly stated, the relevant facts necessary to address the present controversy are as under:-

2.1 Respondent no.2 issued a notice inviting tenders for execution of "RCC cooling tower and cooling water treatment plant package for PDPP, Kochi".

2.2 In pursuance of the aforesaid notice, the petitioner submitted its bid on 13.04.2017. The bids received were subsequently opened and the bid submitted by one M/s Hammon Shriram Cottrell (P) Ltd. was the lowest and the said company was declared L-1. Although the financial bid made by the petitioner no.1 was not the lowest, it was within the band of 15% of the financial bid of M/s Hammon Shriram Cottrell (P) Ltd.

3. It is the petitioners' case that by virtue of the Public Procurement Policy Order dated 23.03.2012 (hereafter 'PPP Order'), petitioner no.1 is entitled to the award of the contract as its financial bid was within the price band of L-1 plus 15%.

4. The PPP Order was issued with the view to support micro and small enterprises. The relevant extract of the said order, which is relied upon by the petitioners in support of their contention, is as under:-

> "6. Price quotation in tenders %(1) In tender, participating Micro and Small Enterprises quoting price within price band of L1+15 per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a Micro and Small Enterprise and such Micro and Small Enterprise shall be allowed to supply up to 20 percent of total tendered value."

5. Admittedly, the contract is an indivisible one and it is not possible of apportion the contract in the manner so as to award 20% of the same to the petitioner and the balance to another bidder/contractor.

6. The learned counsel for the petitioners submits that in such cases, micro and small enterprises would be entitled to the entire order. In support of his contention, he has referred to a press release dated 12.02.2015. He

further submits that the respondents have been implementing the PPP Order and in the past, certain benefits have been granted to petitioner no.1 as well; this is by waiver on Tender fee and Earnest Money Deposit (EMD). He further submits that petitioner no.1 has a legitimate expectation of being awarded the contract.

7. The contentions advanced on behalf of the petitioners are bereft of any merit.

8. Admittedly, the contract cannot be split and, therefore, the petitioner has no legal right to claim that the contract be awarded to the petitioner in preference of the lowest bidder (L1). The PPP Order, which postulates that 20% of the procurement orders by Central Public Sector Undertakings (hereafter 'CPSUs') be awarded to micro and small enterprises is thus, *ex facie*, inapplicable in the facts of the present case.

9. The reliance placed by the petitioners on the Press Release dated 12.02.2015 is also misplaced. The said Press Release is set out below:-

> "**PRESS RELEASE**
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> It has been represented to Ministry of Micro, Small and Medium: Enterprises that in some cases due to the peculiar nature of the procurement such as Import Substitution, Product Development to CPSUs, non-feasibility to break-up size of the order etc., some of CPSUs prior to the implementation of the Public Procurement Policy for MSEs Order 2012 from 1st April 2012, were awarding more than 20% or upto 100% of supplies to the micro and small enterprises who could match L-1 price where L-1 is quoted by other than micro and small enterprises.
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> 2. As per the provision 6 of the Public Procurement Policy for micro and small enterprises quoting the price band of L-1+15% are allowed to supply upto 20% of the total tender

> value provided such micro and small enterprises bring down their price to L-1. However, it has been brought to notice by micro and small enterprises that this provision 6 is coming into the way of earlier higher procurement from micro and small enterprises in above referred situation at Para-1. It is to mention that intention of provisions of provision 6 of the policy is not to restrict earlier high supply opportunity for micro and small enterprises.
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> 3. In light of the above, it is clarified that in the situation of L-1 + 15% as mentioned at Para-1 above, CPSUs may take more than 20% supplies from micro and small enterprises as per their previous procurement pattern on case to case basis for which this Ministry has no objection.
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> 4. The above clarification is issued as per the provision available under Para-16 of the Policy."

10. As is apparent from the above, the press release dated 12.02.2015 merely enables - and not obligates - CPSUs to procure more than 20% supplies from micro and small enterprises. A plain reading of the said press release indicates that it was issued as the PPP Order was being read in a manner so as to restrict the CPSUs, who were sourcing more than 20% of their requirement from micro and small enterprises, from sourcing more than 20% of their requirement from micro and small enterprises. The said release can in no manner be read so as to compel the respondents to award the entire contract to a micro and small enterprise notwithstanding that such enterprise is not the lowest bidder.

11. The fact that petitioner no.1 has derived certain benefits by way of waiver of Tender fee and/or EMD does not in any manner entitle the petitioners to expect that the contract would be awarded to petitioner no.1 even though petitioner no.1 is not the lowest bidder.

12. The petition is, accordingly, dismissed.

13. No order as to costs.

VIBHU BAKHRU, J

NOVEMBER 10, 2017
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