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

Date of Decision: 29.01.2018

+ W.P.(C) 825/2018 & CM APPL. 3517-3518/2018

M/S ROSENBAUER INTERNATIONAL AG AND ANR.

..... Petitioners

Through: Mr. Ajay Verma & Ms. Diviani
Khanna, Advs.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Ravi Prakash, CGSC with
Mr. Farman Ali & Mr. Nitish Gupta, Advs. for
R-1/UOI.

Mr. Rajiv Nayar, Sr. Adv. with Mr. Digvijay
Rai, Mr. Rahul P. Dave, Ms. Niti Dixit,
Mr. Amit Dhingra, Mr. Abhishek Tewari,
Ms. Raunaq B. Mathur, Mr. Sumit Chopra,
Mr. Shivam Raheja, Mr. Mohit Negi, Ms. Zahra
Aziz & Mr. Suryaveer Berry, Advs. for
R-2/AAI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

S. RAVINDRA BHAT, J.(ORAL)

1. Issue notice.
2. Mr. Ravi Prakash, learned Standing Counsel for the Central Government and Mr. Digvijay Rai, learned counsel accept notice for the Union of India and Airports Authority of India respectively.
3. It was agreed by the counsel present that the petition could be disposed of at this stage.
4. The petitioner is aggrieved by the methodology adopted by the second respondent - Airports Authority of India (hereafter

referred to as “the AAI”) whereby the reverse auction conducted by it was for supply of 31 Airfield Crash Fire Tenders with CAMC at various Airports in India.

5. It is contended on behalf of the petitioner that the tender envisioned reverse auction of all the eligible bidders. At the final stage, apparently only 3 bidders were deemed to be technically compliant and entitled to auction; the petitioner was one of them. The other two were Albert Ziegler and NAFFCO. The relevant condition highlighted by the petitioner amongst the stipulations in the NIT pertaining to the reverse auction process is Clause 24. The second respondent - AAI also points to Clause 22. In short, the reverse auction contemplated the uploading of the lowest bid (L1) in respect of each of the four items and facilitating the further bidding to the lowest bid by the eligible bidders. It is a matter of record that the ultimate successful bidder i.e. the third respondent (NAFCO), in fact, had quoted “Zero” in respect of the third item (clearing and forwarding and related services). This was unknown to the other bidders as “Zero” or Nil quote was not reflected in the online bidding process. The AAI explains this omission as technical and submits that even it was unaware about the Nil or “zero” quote by the third respondent. Resultantly, as expected, the third respondent’s bid was deemed to be the lowest in the reverse auction which was issued the LOI.

6. Clause 24 to the extent it is relevant reads as follows:

“24. ONLINE REVERSE AUCTION

24.1 This e-tender shall be decided on the basis of

online Reverse Auction after opening of financial bid.

24.2 Base price for Reverse Auction shall be the L-1 price received in the financial bid opening. The auction will be open for the bidders on specified date & time. During this period the Bidders are allowed to reduce the prices as many times as they desire.....”

7. In this case, the materials on record clearly reveal that the L1 price in respect of every item was disclosed and separate bidding was conducted in respect of each such item whereas for Serial No.1, 2 and 4, the three eligible bidders, quoted equal to or lower than the L1 bid (base price) uploaded. In respect of Item No.3 i.e. the clearing and forwarding charges, etc., only two eligible further bids were reflected in the reverse auction. That result is part of the record (at Annexure P7 at Pages 168 to 171). Undoubtedly, the online reverse bidding did not reflect “Zero”. It is also apparent – from the AAI’s record produced that this omission was not in any manner deliberate but was on account of the designing of the e-auction web portal, by the NIC. Apparently, the NIC did not factor “₹ Zero” bid which resulted in this anomaly. In any event, this in the opinion of the Court, has resulted in a distorted picture inasmuch as only the concerned bidder who offered the “zero” bid was aware about it. The others clearly were not aware. This, in the opinion of the Court, has resulted in denial of a level playing field to the eligible and participating bidders.

8. Upon instructions, counsel for the AAI submitted that the bidding process can be re-worked in such a manner as to include

the 3 eligible bidders in a fresh reverse online bidding process. It is stated that in such event, to avoid a repetition of the anomaly which has confronted the bidders in this case, the “zero” bid would be treated as “₹ 1/-” and so reflected in the reverse auction process. This step is acceptable to the petitioner.

9. Having regard to the above discussion and in view of the statement made by the learned senior counsel for the AAI (upon instructions by the concerned authorized officials on its behalf), a direction is issued to the AAI to issue limited tender enquiry for the equipment in question i.e. the subject matter of the present writ petition as expeditiously as possible and within two weeks, to ensure that all the 3 eligible bidders are afforded a fresh chance, after due rectification of the reverse auction process. It goes without saying that the AAI is bound to intimate this development to the other eligible bidders including the third respondent. The petitioner shall ensure that the validity of its bank guarantee is extended and furnished within a week to enable it to participate in the fresh reverse auction process.

The writ petition is partly allowed in the above terms. All the pending applications also stand disposed of accordingly.

Order dasti under the signatures of the Court Master to the parties.

S. RAVINDRA BHAT, J

JANUARY 29, 2018/kks

A. K. CHAWLA, J