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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1052/2018 & CM APPL. 4389-4390/2018**

GLOBAL CIVIL PROJECTS PRIVATE LIMITED Petitioner

Through: **Mr. S Ravi Shankar with Ms.
Yamunah Nachiar, Advocate**

versus

**BUILDING AND CONSTRUCTION DEPARTMENT AND
ORS. Respondents**

Through: **None**

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **05.02.2018**

The petitioner's grievance is that its bid for the construction of Jharkhand Bhawan in Delhi, in response to a tender (NIT) issued by the State of Jharkhand was unreasonably rejected.

The facts are that on 04.02.2017, the NIT was issued, inviting bids from interested parties for the construction of the New Jharkhand Bhawan in Delhi.

The estimated cost indicated by the NIT was ₹71,04,92,173/-. The NIT indicated that time for completion of the project was 18 months. The last date for submission of the bids was 18.12.2017.

The bidding was through a National Competitive Bidding Process. Consequently, in addition to registered building contractors of the Govt. of Jharkhand, other building construction organisations of various estates also participated. The petitioner lodged its bid on 27.12.2017 offering to complete the work in question for ₹59,88,26,446.58. The bid was found technically feasible and

evaluated as such. A final bid too was considered.

According to the petitioner, the consequent rejection of its bid on the ground that it was far below the 10% acceptable margin - in relation to the indicated price, is arbitrary.

The petitioner relies upon Clause 29.5 of the Instructions to Bidders (ITB) annexed to the NIT which reads as follows:-

“29.5 If the Bid on the successful Bidder is seriously unbalanced in relation to the Engineer’s estimate of the cost of work to be performed under the contract, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, the employer may require that the amount of the performance security set forth in clause 34 be increased at the expense of the successful Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.”

It is argued by the petitioner’s counsel that as the L-1 bidder, it ought to have been invited in view of the above condition and that the rejection of its bid is arbitrary and unreasonable.

As the bids narrated would indicate, the estimated cost of the work was over ₹71 crores. Apparently, the State of Jharkhand rejected the petitioner’s bid on the ground of its being far in excess of the 10% filter applied by it in evaluating the final bid.

The petitioner relies upon Clause 29.5 of the ITB in the present case; the considered view is not appropriate since that condition

covers a situation where a bid is “**seriously unbalanced**”, in relation to the estimated cost of work to be performed under the contract. This is apparent from the reference to “**internal consistency**” of prices in the clause, with respect to the construction methods and the schedule proposed.

So viewed, the filter which seems to have been applied i.e. price indicated beyond 10% of the cost indicated, cannot be faulted with.

The petitioner’s argument is that such a filter was not indicated, and applying it, is inherently unfair. On this, the Court is of the opinion that the criteria adopted while evaluating a bid competitively has to be viewed in the circumstances.

Whilst no one can claim that a bidder who offers a bid beyond the expected or indicated cost can claim the right *per se* to be given the contract equally a bid offering to complete the work or offering the product at a price much below the estimated cost can be also rejected. After all, the agency has to ensure that the services its contracts for, measure up to a certain quality and that the product is not sub-standard.

For the above noted reasons, there is no merit in the writ petition. Accordingly, the same is dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 05, 2018/P