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

\+ W.P.(C) 2657/2018 & CM APPL 10853-10854/2018

M/S CHENNAI MSW PVT. LIMITED

..... Petitioner

Through Mr.Raj Shekhar Rao, Mr.Karthik Sundar and Ms.Ankita Bafna, Advocates.

versus

SOUTH DELHI MUNICIPAL CORORATION AND ORS.

..... Respondents

Through Mr.Gourab Banerji, Sr. Adv. with Mr.Sri Harsh Peechara, Standing Counsel and Mr.Sahil Tagotra, Mr.Ashish Tiwari, Ms.Raka Chatterjee, Advocates for SDMC.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

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

% **15.05.2018**

Learned counsels for the parties have been heard.

The grievance of the petitioner is with respect to the rejection of its bid furnished in response to the respondent Corporation's Notice Inviting Tender (NIT) of 24.11.2017, eliciting offers from interested parties for proposal of integrated collection and transportation of Municipal Solid Waste, Street Sweeping Waste and Drain Silt in the

Najafgarh Zone. It is contended that the petitioner's bid was rejected in an unreasoned manner at the technical evaluation stage by the respondent agency on 11.01.2018.

At the stage of issuing notice the Court had recorded as follows:

> *"The petitioner's grievance is that its bid was rejected without citing any reason, it cites that in a previous bid for similar work, its bid, citing the same parameters and relying upon the same eligibility terms and other parameters was accepted and declared as L-2. Learned senior counsel for the respondents, appearing on advance notice, submits that the petitioner's bid was rejected on the ground that the required conditions set-out in the Notice Inviting Tender (NIT) were not incorporated in the bank guarantee that supported the bid. It is also stated on this issue that a specific clarification was sought by the petitioner and given by the respondent.*
>
> *Issue notice to South Delhi Municipal Corporation (SDMC). The respondents shall file a brief affidavit relevant to the controversy and also produce the original file pertaining to the bid rejection on the next date of hearing.*
>
> *List on 15.05.2018."*

The SDMC which is represented by Mr.Gourab Banerji, Sr. Advocate submits that the bid rejection was justified. In the circumstances of the case the petitioner's bid did not comply with the expressed terms of the tender, with respect to the format of the guarantee. It is highlighted that in Clause 2.1.23 of the NIT the bidders were warned that bids would not be processed if they were not accompanied by the bid security in the format prescribed in

Appendix VIII. It is also stated that in the pre-bid meeting (held on 07.12.2017) the petitioner sought for change of the bank guarantee format which was not acceded to. It was submitted that in the circumstances, the bank guarantee tendered dated 26.12.2017 and valid up to 25.9.2018 in fact was not compliant with the terms i.e. the relevant conditions in Appendix VIII. In this regard, it is stated that the Appendix VIII specifically stipulated as follows:

> " *In case the bank delays in making payment within 15 days of invocation of the guarantee, the bank is liable to pay interest on the amount due @ Bank PLR beyond the 15 days from the date of receipt of invocation letter by the bank.*"

The bank guarantee furnished by the petitioner (copy of which has been produced by the respondent today), in fact, does not incorporate such a condition.

Having regard to these developments, this Court is of the opinion that the respondent Corporation's position with respect to the non-compliance with the tender condition so as to justify its decision to reject the petitioner's bid, cannot be characterised as arbitrary or illegal.

It is, however, argued that in the past when identical bank guarantee was furnished with respect to the same tender conditions the petitioner's bid was not rejected. The Court is of the opinion that this argument is not merited. In the event of such past tender containing stipulation which specifically requires the conditions akin to the one prescribed by Appendix VIII (i.e. with respect to the payment of interest), the mere circumstance that such tender was accepted and processed notwithstanding the tender conditions could not have created any equity, at any rate, and does not create any precedent.

The writ petition fails, it is accordingly dismissed.

Pending applications too are disposed of accordingly.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MAY 15, 2018
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