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

+ W.P.(C) 4545/2018 & C.M. No. 32265/2018

AVBS DIGITAL SOLUTIONS PVT LTD Petitioner

Through Mr.Ranjeet Kumar, Adv.

versus

POST GRADUATE INSTITUTE OF
MEDICAL EDUCATION & RESEARCH & ANR..... Respondents

Through Ms.Shiva Lakshmi, CGSC with
Mr.Siddharth Singh & Mr.Ruchir R.
Rai, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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01.10.2018

C.M. No.32265/2018

1. For the reasons stated in the application, the delay in filing the petition is condoned. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 4545/2018

3. The petitioner has filed the present petition, inter alia, impugning a communication dated 11.04.2018 whereby respondent has terminated the annual contract maintenance (AMC) awarded to the petitioner.
4. The respondent had issued a notice inviting tender (NIT) on 27.01.2016 inviting bids from various service providers for providing comprehensive maintenance support in respect of computers, printers, fax, scanner and laptops at PGIMER, Dr. Ram Manohar Lohia Hospital, New

Delhi. The petitioner submitted its bid pursuant to the aforesaid NIT. After receipt of bids, the parties entered into negotiations. The petitioner asserts that it agreed to reduce the amount quoted by it on the condition that the term of the contract be extended for a period of three years instead of one year as mentioned in the NIT. The price as negotiated was agreed by the respondent. And, on 12.04.2016, the respondent issued a letter of approval expressly stating that the term of the contract would be for a period of three years commencing 01.04.2016 to 31.03.2019. In terms of the letter dated 12.04.2016, the terms and conditions as mentioned in the tender documents were incorporated as part of the said letter. The said letter was accepted and there is no dispute that a binding contract came into existence between the parties.

4. There is also no dispute that the terms and conditions as stated in the tender documents (NIT) formed a part of the contract entered into between the parties.

5. Paragraphs 16.7 and 16.14 of the tender documents are relevant and are set out below:

“16.7 The contract will be valid for a period of one year from the date of award of the work order for AMC. The rates quoted should also cover the maintenance of operating system, software installation, installation of patches, Anti-virus, detection/removal of virus configuration of application (client/server), connection of computers/Laptops to projector/Video conferencing Machine for presentation. The rates quoted will remain in force for the full period of the contract. No revision of rate on any account shall be entertained during the contract period. No revision of rate of any account shall be entertained during the contract period. It will be open to PGIMER to extend

the term of the agreement on the same terms and conditions for a further period upto one/two year, if necessary.

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16.14 The contract can be terminated by this Tribunal at any time without giving any notice or without assigning any reason, if the work of the contract is found unsatisfactory during the currency of this contract. In this connection decision of the Head of Department, PGIMER shall be final and binding on the firm.”

6. Although NIT was issued inviting bids for a contract of a term of one year, it is admitted that subsequent to receipt of bids, the parties entered into negotiations and it was agreed that the terms of the contract would be for a period of three years. The petitioner also contends that this was one of conditions on the basis of which the petitioner had, in fact, reduced the price quoted by it.

7. Ms Shiva Lakshmi, learned counsel appearing for the respondent submits that in terms of paragraph 16.14 of the tender documents, the respondent had an unrestricted right to terminate the contract at will without assigning any reason. She submits that the very fact that the prices quoted by the petitioner were higher than what were prevalent in the market, was sufficient reason for the respondent to be dissatisfied with the performance of the contract and entitled the respondent to terminate the same. The said contention is unmerited. The words ‘work of the contract’ as used in paragraph 16.14 of the tender documents relate to the performance of the contract and not prices being charged as the same were negotiated and settled at the time of the award of the contract.

8. It is also relevant to note that the respondent had produced the relevant files and the same indicates that there was no issue regarding the petitioner's performance of the contract and the only reason for terminating the contract prematurely is that the respondent's view that similar services could be procured and cheaper rates.

9. Ms. Lakshmi further contended that notwithstanding the contentions advanced by the petitioner, the contract itself is determinable and, therefore, the petitioner would not be entitled to the relief as sought by way of this petition as the same would amount to directing specific performance of the said contract. The said contention is merited. The relief sought for by petitioner amounts to seeking a specific performance of the contract, which is impermissible in terms of Section 14 of the Specific Relief Act, 1963

10. The petition is, accordingly, disposed of leaving it open for the petitioner to institute appropriate action for seeking remedies as available in law.

11. Order *dasti*.

VIBHU BAKHRU, J

OCTOBER 01, 2018

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