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

Date of decision: 09.05.2018

+ **W.P.(C) 4954/2018 & CM APPL. 19132-19133/2018**

AROON AVIATION SERVICES PVT. LTD. Petitioner

Through: Mr. Rohit Madan, Mr. Amol Sinha,
Mr. Nitin Gulati and Mr. Anshum
Jain, Advocates.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA AND ANR.

..... Respondents

Through: Ms. Gunjan Sinha Jain and
Mr. Mukesh Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (ORAL)

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The petitioner by way of this petition challenges the Bid of the second respondent GA Digital Web Word Pvt. Ltd. (hereinafter referred to as 'GA Digital'). Both the petitioner and the said contesting respondent-GA Digital competed in response to a tender published by the respondent no.1/National Highways Authority of India ('NHAI') inviting tenders from qualified bidders for providing facility services for its corporate office at New Delhi.

2. It is contended that the relevant tender condition i.e. Clause 4.1(e)(v) was completely ignored by the respondent no.1/NHAI while considering the bid of GA Digital. It is further contended that in holding that the GA Digital's bid was responsive to NHAI, the NHAI has acted arbitrarily. In this regard it is submitted by the learned counsel for the petitioner that the tender requirement, which has to be strictly construed, states that the concerned bidder should "submit the CV of atleast one senior person well experienced in similar type of job for the site in-charge post". It is stated that in the present case GA Digital has furnished the CV of its Director which nowhere *ex facie* discloses on-site experience and on the contrary it appears that he holds a managerial position. It is submitted that the condition of such bid and declaration of its responsiveness (which led to declaration of GA Digital as L1 bidder) is arbitrary.

3. The NHAI, which is represented before the Court and appears on advance notice, draws the attention of this Court to Clause 4.1(d) which stipulates the eligibility condition in terms of experience. It is submitted that GA Digital has more than adequate experience; in this context the Court's attention is invited to the bid analysis – which is part of the record. Learned counsel for NHAI emphasises that the CV of the Director of the GA Digital was acceptable as compliant with the Clause 4.1(e) for the simple reason that the Director of a closely held company, with a track record of fulfilling the eligibility conditions of performing similar work for five years, implies that he is virtually the

owner and has successfully managed the company and has on-site experience, which includes facility services.

4. Clause 4.1(d) & (e) are relevant and are reproduced as follows:-

“4.1(d) The bidder should have minimum of 5 years experience in providing facility services in Government Organization, Public Sectors Undertaking, Autonomous Body, Private Sector of repute only.

4.1(e) The bidder shall submit the following information/documents on eligibility and qualification:-

i) General information

ii) Annual audited turnover for last 3 years duly verified by a Chartered Accountant (Registered).

iii) A certificate from Chartered Accountant as a proof of turnover for the last 3 years.

iv) Additional information regarding litigation, debarment, arbitration or blacklisting etc.

v) The firm/ organization should submit the CV of at least one senior Person, well experienced in similar type of job for site in-charge post, whose particulars such as Name, Age and Experience should be furnished, failing which the bid shall be treated as non-responsive.

vi) The bidder should submit Affidavits & Power of Attorney duly notarized by notary on Stamp Paper(s) of requisite value, in original, as per enclosed formats, without which the bid shall be rejected.

vii) Bidder should submit the self attested photocopies of registration certificates of ESI, PF, PAN No., PPF, Labour license and GST Regn. No. duly certified by the authorized signatory. An

indemnify bond for any failure on this account may be given by the bidder.

viii) Year of Constitution of company/firm etc.

ix) Legal status of Bidder (Proprietorship/ Partnership or Pvt. Ltd. firm)

[Upload scanned copy of original]

x) Place of registration:

xi) Principal place of business;

Note : (i) Power of Attorney of signatory of Bid [Upload scanned copy & also supply Original copy (in envelop of physical form)]

(ii) Total value of work done in the last three years (in Rs.) (Upload scanned copies of certificate from Chartered Accountant)

2014-2015 : _____
2015-2016 : _____
2016-2017 : _____
Total _____
Average per year: _____ ”

5. The scope of work i.e. facility services is amplified in Section-V of the tender. That part of the tender is a tabular statement enumerating the nature of the positions of personnel that the bidder has to employ and the services they have to provide. It is quite apparent that the kinds of services sought by the NHAI are not of a highly technical nature involving complex expertise; the employees needed to be hired include Computer Operators, Messengers, Dispatch Riders, Jr. Executive Officer Protocol, Drivers, Stenographers etc. In short, the scope of work is providing manpower and its management.

It is not disputed that as far as the eligibility condition spelt out in Clause 4.1(d) is concerned, the GA Digital fulfils the same – it is evident from reading of the big sheet published by the NHAI on 16.04.2018. It shows that the GA Digital had in the past provided facility services for more than five years to large organisations such as the Directorate General of Health Services (DGHS), Directorate of Health & Family Welfare, Ram Manohar Lohia Hospital and an organisation under the control of the Union Ministry of Communications. As such there cannot be any dispute that the GA Digital does possess the experience and fulfils the eligibility conditions stipulated in that regard.

6. Seeing from this perspective, the circumstance that it offers its Director (GA Digital) being a closely held company and whose day-to-day operations appear to be under the control of its Director(s), the Court is of the opinion that there is no infirmity in NHAI's decision in holding that the tender of the said bidder i.e. of GA Digital was responsive.

7. It is too well established that the authority of interpreting the tender conditions and the terms upon which a public agency or the Government or the State would enter into a contractual relationship with any entity or individual is not subject to primary interpretation by the Court. Furthermore, in such cases the judicial review does not extend to review of the decision but rather as to whether the process is tainted by unreasonableness, irregularity or lacks any *bona fides*. In the present case, the NHAI's decision to treat GA Digital's bid as

compliant cannot be termed as unreasonable or arbitrary as to call for interference under Article 226 of the Constitution of India.

8. The writ petition is therefore dismissed along with the pending applications.

Order *Dasti*.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MAY 09, 2018

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