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

\+ **W.P.(C) 9577/2018 & CM No.37264/2018**

M/S EXPRESS FOOD SERVICES AND ANR. ...Petitioners

Through : Mr. Lalit Kumar and Mr. Vishal Sharma, Advs.

versus

UNION OF INDIA AND ANR. ..... Respondents

Through : Mr. Jagjit Singh, Sr. Standing Counsel for Railways.

\+ **W.P.(C) 9705/2018 & CM No.37835/2018**

SUJA SUNIL ..... Petitioner

Through :

versus

MINISTRY OF RAILWAYS AND ORS. ..... Respondents

Through : Mr. Jagjit Singh, Sr. Standing Counsel for Railways.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **04.12.2018**

It is stated on behalf of the Railways that the previous order of the Court in W.P.(C)No.9577/2018, directed it to consider the bids, without insisting upon submission of the latest audited accounts/report, but rather by accepting it later after its preparation.

The order of the Court dated 12.09.2018 in W.P.(C)No.9577/2018 reads as follows :

"WP(C) No.9577/2018 & CM No.37264/2018

M/s Express Food Services and M/s Baba Caterers have filed the present petition, challenging Clause 3.3 of Chapter-III-eligibility criteria and evaluation criteria of bidders mentioned in the tender notice floated by Northern Railways, statedly dated 13.8.2018.

For the sake of convenience, we would reproduce the impugned Clause 3.3 of Chapter-3, which reads as under:

"3.3 ***Minimum Annual Turnover (essential)***

For GMU at A1 class stations the bidder must have minimum annual turnover of 4.5 times of Indicative License Fee in any one of the previous three financial years from catering business.
For GMU at A&B class stations the bidder must have minimum annual turnover of 3 times of Indicative License Fee in any one of the previous three financial years from catering business.

Note: All GMU's at Category A-1 stations are proposed to be declared as Prime Location

The bidder would submit audited balance sheet and profit and loss account or Income Tax returns of previous three [3] financial years i.e. 2015-16, 2016-17 and 2017-18, duly certified by the Chartered Accountant."

The contention of the petitioner is that under law, audit of books of accounts for the period ending 31.3.2018 is *required to be completed on or before 30.9.2018. Hence, the requirement of Clause 3.3 that the bidders must submit audit accounts duly certified by the chartered accountant, for the year 2017-18, is contrary to law and requires correction. The said Clause does not take notice and is contrary to law, which does not require books of accounts to be audited, on or before the date of submission of the tender, i.e., 12.9.2018, 18.9.2018 and 26.9.2018. Our attention is drawn to the tenders floated by Moradabad Division, which had required furnishing of the audited accounts for the year ending 31.3.2017.*

Learned Senior Standing counsel for the Northern Railway, who appears on advance notice, has drawn our attention to the first para of Clause 3.3 and also annexure-5 of the tender document, which requires the chartered accountant to certify the annual turnover of the bidder for the years 2014-15, 2015-16, 2016-17 and 2017-18. He submits that there should be no difficulty in certifying the said turnover. Further, M/s Baba Caterers had participated in another tender floated and had submitted audited accounts for the year ending 31.3.2018.

However, learned Senior Standing Counsel for the respondent accepts that, as per law, for the year 2017-18, accounts are required to be audited on or before 30.9.2018.

In view of the aforesaid position, we are inclined to issue notice in the writ petition and also pass a limited interim order.

The respondents are directed that they would accept the bids, accompanied by audited accounts for the years 2015-16 and 2016-17. The bidders would also furnish details in terms of annexure-5, i.e., turnover from catering business for the years 2014-15, 2015-16, 2016-17 and 2017-

18. The respondents would, however, grant some time to the bidder to furnish audited accounts for the year ending 2017-18, post 30th September, 2018. They would fix a reasonable period, convenient to the bidders and that which would not disturb their schedule/time frame. The bids submitted would not be rejected, for the reason that the audited accounts for the period 2017-18 have not been submitted with the bids.

The aforesaid order is subject to the final decision/outcome of the present writ petition.

Counter-affidavit would be filed within four weeks. Rejoinder, if any, may be filed within four weeks, after counter-affidavit is served.

As books of account of the second petitioner have been audited, they would submit audited accounts. list on 4th Dec., 2018.

Dasti under signature of the Court Master."

A similar order was passed on 14.09.2018 in W.P. (C) No.9705/2018.

The statement of ld. Senior Standing Counsel for the Indian Railways today is that pursuant to the previous orders, the petitioners' bids were accepted and duly processed and appropriate actions in accordance with law are being taken. In these circumstances, this Court is of the opinion that the petitioners' bids should be deemed compliant with respect to the particular condition vis-à-vis submission of audited accounts/reports. The bids shall therefore, be processed on their merits.

In W.P.(C)No.9577/2018, ld. Senior Standing Counsel for the Indian Railways submits that some difficulty has been experienced because the first petitioner has been at times corresponding through a partner whereas the bidder's name and description is "M/s Express Food Services". Henceforth, the petitioner shall correspond entirely as "M/s Express Food Services".

The writ petitions are disposed of in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

DECEMBER 04, 2018

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