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

Decided on: 19.11.2018

+ **W.P.(C) 11544/2018 & CM Appl. Nos. 44676-44677/2018**

M/S TAMIL NADU WASTE MANAGEMENT LTD.

..... Petitioner

Through: Mr. Raj Shekhar Rao, Mr.
Matrugupta Mishra, Ms. Aastha
Chawla & Mr. Karthik Sunder
Advocates

versus

**DELHI STATE INDUSTRIAL AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD (DSIIDC)**

..... Respondents

Through: Ms. Anusuya Salwan & Ms.
Nikita Salwan, Advocates

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

MR. JUSTICE PRATEEK JALAN (OPEN COURT)

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1. This writ petition concerns a Notice Inviting Tenders (*NIT No. 2/17-18*) issued by the Respondent for “Development of Treatment, Storage and Disposal Facility for Hazardous Waste on Build, Own, Transfer basis at Bawana, Delhi” (hereafter, “the NIT”). The Petitioner is aggrieved by the rejection of its bid on the ground that it has not complied with the technical specifications of the tender.

2. The undisputed facts are these: The NIT was issued in February 2018. The petitioner and one other party responded, and technical bids

were opened on March 7, 2018. Certain clarifications were sought by the Respondent by a letter dated April 13, 2018, to which the Petitioner responded on April 17, 2018. By a letter dated June 27, 2018, the Respondent informed the Petitioner that an Evaluation Committee had been constituted and invited the Petitioner to make a power point presentation of its technical proposal before the Evaluation Committee on July 2, 2018. The presentation was thereafter rescheduled by a letter dated August 3, 2018, and in fact took place on August 7, 2018. The other bidder, viz. SMS Ltd., also made a presentation to the Technical Evaluation Committee. The Petitioner states that it was verbally informed on September 27, 2018 regarding the rejection of its technical bid, against which it made representations to the Respondent. However, a Tender Summary Report was uploaded on the website (where the e-tender was hosted) on October 18, 2018 stating that the Petitioner had not complied with the technical specifications of the tender. It is in these circumstances that the present Writ Petition has been filed.

3. Mr. Raj Shekhar Rao, learned counsel for the Petitioner submitted that rejection of the Petitioner's bid has led to a single bidder being treated as responsive, and the Petitioner has not even been informed of the reasons. He contented that the bid documents permitted the Respondent to evaluate the technical bid only on the grounds contained therein and the Respondent was neither entitled to call for presentations from the bidders after opening the technical bids, nor was it permitted to reject the bids on grounds other than those mentioned in the tender conditions.

4. Ms. Anusuya Salwan, learned counsel for the Respondent, on the other hand, submitted that the bid of the Petitioner had been found unsuitable on evaluation by the duly constituted committee, as contemplated by the NIT. She referred in particular to Clauses 3.1, 3.3.6, 3.3.7 and Appendix X of the NIT. Ms. Salwan submitted that the technical evaluation of an expert committee ought not to be interfered with by the Court under Article 226 of the Constitution. She also placed the original record of the Respondent before us.

5. The relevant Clauses of the NIT are set out below:-

“3.1 Opening of the Bids

3.1.1 An Evaluation Committee, constituted by DSIIDC will open Technical Bids as per scheduled date and time in the presence of the Bidders who choose to attend.

3.1.2 The Evaluation Committee will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.

3.1.3 To facilitate evaluation of Bids, DSIIDC may, at its sole discretion, seek clarification in writing from any Bidder regarding its Bid and such Bidder shall provide its response in writing within the time period specified by DSIIDC in this regard.

3.1.4 In the event DSIIDC receives only one Bid, it may at its sole discretion open and evaluate such Bid, reject it, cancel the Bidding Process or launch a new bidding process.

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“3.3.6 The Technical Bids shall contain all the elements described in Appendix XI. If a Bidder does not provide all the elements requested under Appendix XI in its Technical Bid, then its Technical Bid shall be declared not eligible by DSIIDC and shall be rejected. A Bidder whose Technical Bid has been declared not eligible by DSIIDC shall be disqualified from the Bidding Process

and its Bid Security shall be returned as per Clause 2.16.3

3.3.7 The Evaluation Committee shall review complaint Technical Bids and apply the evaluation criteria set out in Appendix XI to determine whether the Technical Bids pass or fail the conditions of such Appendix XI.”

6. Ms. Salwan submitted that reference to “Appendix XI” in Clauses 3.3.6 and 3.3.7 should be read as “Appendix X”, which provides the format of the technical bid. Appendix X provides *inter alia* that the bidder must provide the technical approach and methodology it proposes to employ. The following parameters of evaluation, alongwith the weightage attributed to each and the respective criteria for evaluation, are set out therein:-

- 1. Technical Plan for Construction of the TSDF including secured landfill and incinerator for hazardous waste (35marks)*
- 2. Operation & Maintenance Plan (35marks)*
- 3. Organization & Staffing (15marks)*
- 4. Environment Health & Safety Policy and Practice (15marks).*

It is also provided in Appendix X as follows:-

“A Bidder shall have to score at least 70% against each and every parameter in order to qualify for the opening of the Financial Proposal.”

7. It is evident that the NIT specifically provided for a Technical Evaluation Committee and also for clarifications to be sought by the Respondent to facilitate the evaluation of the bids. By its letters dated June 27, 2018 and August 03, 2018, the Respondent invited the Petitioner to make a power point presentation of the technical proposal

submitted by it before the Evaluation Committee. We are of the view that such a course was very much open to the Respondent. In a complex contract such as the present one, the Respondent could reasonably decide that a power point presentation which explains the bidder's technical proposal, would be the most effective way of seeking the required clarifications and reaching an informed decision. In any event, the Petitioner participated in this process without demur, and we are not inclined to accept its belated protest on this score.

8. Similarly, we are also unable to accept the Petitioner's argument that the technical evaluation of the bid ought to have been concluded only on the bid documents submitted, and without reference to the presentations made by the bidders. It is clear from the letters dated June 27, 2018 and August 03, 2018 referred to above, that the presentations were required to be in line with the technical proposal already submitted by the bidder, and that the purpose of the presentation was to enable evaluation of the technical bids. Having called for such presentations, it would in fact have been perverse for the Respondent to have ignored them altogether.

9. We have also examined the original records of the Respondent placed by Ms. Salwan and find a detailed appraisal of the technical proposals of both the bidders by the Technical Evaluation Committee on August 07, 2018, i.e. the date on which the presentations were made. The committee has pointed out several deficiencies in the Petitioner's proposals including inter alia the following:-

“Remarks

- *Layout Orientation of the plant found incorrect.*

- *Landfill has been designed over the existing natural escape drain.*
- *Existing natural escape drain has been diverted without considering land requirements and statutory clearances to be obtained which may affect the implementation plan.*
- *Detailed area allocation statement not provided.*
- *The implementation plan does not include the timeline for obtaining Statutory approval from concerned authorities in relation to construction below High Tension lines.*
- *Calculation and methodology for the operation not shown.*
- *Nothing mentioned about Material Balance sheet for the plant.*
- *Qualification of manpower at every section not provided.*
- *Details about leachate likely to be generated and its treatment not provided.*
- *No information about sewage generation and treatment provided.*
- *Surface runoff treatment plan not given.”*

10. Consequently, the committee has awarded only 48 marks out of 100 to the Petitioner's technical proposal whereas the other bidder (M/s SMS Ltd.) has been awarded 79 marks out of 100. The Petitioner failed to score the minimum qualifying score of 70% against each of the stipulated criteria. The deficiencies identified by the Technical Committee upon which the Respondent has based its decision do not appear to be arbitrary or perverse in a sense that would justify the intervention of the Court. To sit in review over the merits of a technical evaluation is entirely beyond the realm of the Court's

jurisdiction in such cases, and Mr. Rao very rightly did not invite us to do so.

11. For the reasons aforesaid, we see no reason to interfere with the impugned decision of the Respondent. The writ petition is dismissed, but without any order as to costs.

**PRATEEK JALAN
(JUDGE)**

**S. RAVINDRA BHAT
(JUDGE)**

NOVEMBER 19, 2018

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