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

Date of decision : 29.01.2018

+ W.P.(C) 8768/2017 and CM Nos. 35898-35899/2017 & 42006/2017

EMINENCE EXHIBITION SOLUTIONS PVT. LTD.

..... Petitioner

Through: Mr. Ashish Virmani, Mr. Binay Kumar and Mr. Sarvpreet Singh, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Kirtiman Singh and Mr. Waize Ali Noor, Mr. Prateek Dhanda and Mr. Saeed Qadri, Advs. for R-1 & R-2.
Mr. Rishikant Singh and Mr. Rajit Singh, Adv. for R-3.

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 challenges its tender's rejection in the technical bid and financial bid for OTDYKH, Moscow, Russia and related fairs, for which tenders for services were invited. The petitioner was one of the participants in the tenders and had bid for construction of "India Pavilion" at various locales such as Moscow and St. Petersburg (Russia), Warsaw (Poland), Stuttgart (Germany), Tel Aviv (Israel) and

Munich (Germany). It is contended that the successful bidder M/s Heruvim Alliance LP, impleaded as third respondent in these proceedings, did not possess the basic criteria to render it eligible as it claimed to be associated with or a partner of one Wintex International, even though, no further details with respect to the latter entity was provided.

2. Brief facts are that the petitioner was one of the applicants, who participated in the NIT issued by the Ministry of External Affairs, Government of India. The tender was for construction of “India Pavlion” at various locales. The scope of work was “Conceptualization, designing and construction of India Pavilion”. The specifications relating to these pavilions were spelt out in para 4 of the NIT. Para 5(1) outlines the conditions that tenderer had to possess. These are extracted, as follows :

“5.1. The tender should be submitted in two covers as follows:

Cover-I : Superscribed "OTDYKH Moscow Russia, Inwetex- CIS Travel Market St.Petersburg Russia, TT Warsaw Poland, CMT Stuttgart Germany, IMTM Tel Aviv Israel,FREE Munich Germany and MITT Moscow Russia - Technical Bid".

To include the following documents/details :

(i) Details of the Tenderer

- Profile of the Agency / Company.*

- *Track record - details of involvement in similar events, with copies of relevant work orders in support of the details furnished. Experience of setting up Pavilions/Booths/Stand at International Fairs / Exhibitions / Events as well as at International Tourism related Fairs / Exhibitions Events during the last three years maybe highlighted.*
- *All bidders should submit a self-undertaking that they have never been blacklisted by any Government of India Ministry/ Department/ Authority/Organisation/ Agency.*
- *Details of any awards won for stand design in the past three years.*

3. The two steps tender evaluation process doctined by the Central Government contemplates assessment of technical bids or strength of the rival participants. In this round, the petitioner's bid failed. That of the other tenderers, such as Ventures Advertising (P) Ltd., Exposition UK Ltd., 6th P. Marketing, Heruvim Alliance (3rd respondent) and Expression Ad Agency Pvt. Ltd. were found eligible. The financial bids of such eligible bidders were opened. Heruvim Alliance emerged as the successful bidder, which had offered the lowest bid. The petitioner questions the decision of the Central Government as arbitrary.

4. Pointing to the tender conditions, especially clause (5), it is submitted that Heruvim Alliance never made any material disclosures with respect to its claim as regards the prior subsisting relationship

with Ms. Wintex International. It also did not independently furnish any material to establish such relationship, detailing what was the kind of experience that the said entity possessed. It was urged that the Central Government by blindly accepting the claim made by Heruvim, acted in utterly arbitrary manner.

5. The Central Government, which has responded to the Court notice and directions issued, produced the relevant records. These disclose that the technical assessment of various bids showed that Heruvim and another bidder were awarded the highest marks (64) in the technical appraisal/evaluation. The petitioner was awarded 42 marks. Its complaint that Heruvim did not make relevant disclosures about its relationship with Wintex International, in the Court's opinion is not borne out. On 05.07.2017, India Tourism Office of London appears to have written to Heruvim in the context of award of another contract. The tender in the present case was accompanied by brochure/profile submitted by the bidders including Heruvim. This clearly mentions the involvement and role of Wintex International. Although, no specific details were furnished with respect to the nature of relationship, what is clear is that the experience claimed was not that of Heruvim alone but that of Wintex International. The Central Government has also relied upon the copy of Memorandum of Understanding entered into between Heruvim and Wintex International on 05.07.2017. This seems to have been placed on its record, in the context of an answer to a query made by the Central Government. The petitioner's objection to this document is that it is an afterthought and appears to have been created post-facto to justify

the impugned award of tender.

6. In the Court's opinion the approach adopted by the Central Government in this case cannot be characterised as arbitrary or irrational. The relationship between Wintex International and Heruvim, the successful bidder - was disclosed at the very first instance, when the bid was made. That bid enclosed a copy of the profile. Clearly the profile claimed experience that could not be ascribed or attributed to Heruvim alone. Therefore, regardless of the authenticity of Memorandum of Understanding of 05.07.2017, the decision of the Central Government cannot be faulted, especially, having regard to the circumstance that the petitioner's bid was found to be technically non-compliant - it was awarded 42 marks, as against Heruvim's 64 in the present case.

7. For the above reasons, the Court is of the opinion that there is no merit in the petition. The petition alongwith the pending applications is accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 29, 2018

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