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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 10.01.2018

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W.P.(C) 10931/2017

SARVESH SECURITY SERVICE PVT. LTD. Petitioner

Through: Ms. Aastha Jain, Adv.

versus

UNIVERSITY OF DELHI

..... Respondents

Through: Mr. Amit Bansal with
Ms. Seema Dolo & Mr. Akhil Kulshrestha,
Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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10.01.2018

CM No.1110/2018

1. Issue notice.
2. Mr. Amit Bansal, learned counsel accepts notice for the University of Delhi.
3. With consent, the application is taken up for disposal.
4. On 08.12.2017, this Court by its judgment had set aside the tender rejection of the Delhi University, which had sought recourse to Clause 6.2 of the NIT and Clause 7 of the Instructions to Bidders. The Court had concluded in the

judgment that the stipulation with respect to considering of tenders did not spell out qualifying conditions except stating that an entity having been blacklisted, would be debarred. University had relied upon Rule 151 of the General Financial Rules, which is of bar of entering into contracts, with parties or individuals, who are convicted for any offence punishable under the Prevention of Corruption Act or Indian Penal Code. In the present case, one of the petitioner's Directors has been charged for an offence under Section 354 IPC.

5. Pursuant to the Court's order, the petitioner's representation was considered by the University and rejected by a detailed reasoned order. The said order of 05.01.2018 *inter alia* reads as follows:

“Accordingly, the Committee has considered your representation and has come to a conclusion that your technical disqualification has been rightly carried out based on the following ground:-

A. The University deals with the education of young students, including female students. Along with hostels for girls and other students including foreign national which require round the clock security services for their safety and well being. Any such allegation, serious in nature, which puts doubts in the minds of public authorized involved not only in providing education but also for their physical well being in and around the campus, raises apprehensions on credibility of such bidders

and thus, such bidders cannot be permitted in the University considering the larger public interest.

B. Further, as per the extant terms conditions of the Tender Document including but not limited to Clause 7.06, 7.07 and 7.12. The representation made by M/s. Sarvesh Security Services Pvt. Ltd. is not tremble and the University reserves the right to cancel / withdraw / disqualify or reject the bidder.

C. Further, since the complaint was filed after opening of the financial Bid on 05.12.2017 at 03.00 pm cannot be considered by the University. Moreover based on similar and indexical ground other bidders the presents Tender have also been technically disqualified.

According, after perusal of your representation, the committee floured no meant in the representation, as the same does not establish the credibility beyond doubt, which is a necessity because the University deals with the education of young students, including female students decide the employers of the University and being funded from public money. Thus any such apprehension which puts doubts in the credibility, cannot be neglected in view of the larger public interest.

Hence, it is informed that your representation cannot be considered.”

6. The Court is of the opinion that the rejection of the petitioner's tender on a facial consideration, as it were, is entirely unwarranted. While the Court was circumspect and did

not grant the relief by a direction to the University to take the bid and consider it on its merits in the first instance, that did not mean that the observations made by it with respect to the eligibility or mandatory conditions, nowhere spelt out any disqualification of the kind, now used by the University, in any way, are not final. In other words, those observations are, in fact, findings which bind the University. All that the University was asked to do was to take a second look and decide for itself whether to consider the tender on the merits. Today, this Court in *Orion Security Solutions Pvt. Ltd. v. University of Delhi* W.P.(C) No.252/2008 has, in almost identical circumstances, held that the mere implication of a party in a First Information Report *per se* would not disqualify it and that the condition in Clause 6.2 – relied by the University in this case, relates to ascertainment or verification of the particulars mandated in Clause 3. Furthermore, the Court also held that Clause 7 is to operate at the stage of offer of evaluation of the various rival bids. In this case, concededly that stage has not arisen.

7. For the above reasons, the Court is of the opinion that the rejection of the petitioner's representation and consequently, its tender, are arbitrary. The University is directed to evaluate it technically and if found otherwise eligible, proceed to evaluate its financial bids. Like in *Orion Security Solutions Pvt. Ltd. v. University of Delhi (supra)*, the University is at liberty to take a final decision on whether to award or not award the tender

having regard to Clause 7 and the circumstances of the case, after evaluating all the facts and in the light of the offer of evaluation and the merits of all tenders.

The application is accordingly allowed.

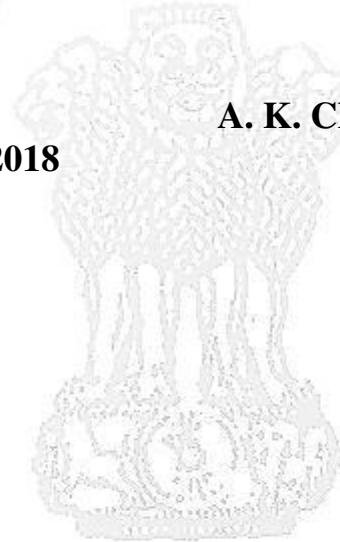
Order dasti under the signatures of the Court Master.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 10, 2018

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