**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No. : 20823 of 2018(O&M)
Date of decision : September 24, 2019

M/s Zulliever Enterprises and Entertainment ...Petitioner

Versus

Chandigarh Administration and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Amit Jhanji, Advocate for the petitioner.

Mr.Anurag Chopra, Advocate for respondent No.4.

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Harinder Singh Sidhu, J. :

1. The petitioner is a Proprietorship Firm. By filing this writ petition, the petitioner has sought quashing of the tender dated 08.08.2018 (Annexure P-6 (colly) whereby it was declared unsuccessful in the technical bid and respondent No.4 – M/s United House has been declared successful.

2. Respondent No.2- Chandigarh Industrial and Tourism Development Corporation Ltd. (CITCO) issued an E-tender inviting offers/E-bids for licensing out the entire Health Club Premises on Design, Built, Operate and Transfer (BDOT) in Hotel Mountview, Sector 10, Chandigarh for a period of 10 years on Public Private Partnership mode with monthly license fee. As per this e-tender, the eligibility required for grant of contract was that the tenderer should have minimum 3 years experience of managing, operating or running at least one health club which includes one Gym, SPA and Pool in a 3/4/5 Star Hotel/equivalent hotel of

reputed brand. The tenderer was also required to submit a banker certificate of financial soundness/solvency certificate from their nationalized/scheduled Bank for Rs.50 lacs. The tenderer was also required to submit a undertaking that it is not a defaulter of any statutory payment. The last date for uploading the e-tender document was 30.7.2008 upto 3.00 p.m.

3. The petitioner applied for the said tender. It submitted e-tender documents on 30.7.2018. It requested the authorities that it would submit the solvency certificate before opening of bids as the Bank Manager of the concerned Bank was on leave. It submitted the Solvency Certificate on 01.8.2018.

4. Three tenderers namely (i) M/s United House (respondent No. 4) (ii) Bonzo Resorts Ltd and (iii) M/s Zulievr Enterprises and Entertainment(petitioner) applied.

5. On 08.8.2018, the technical and financial bids were opened. The technical bid of the petitioner and Bonzo Resorts was rejected. Respondent No.4 was held to be successful and was awarded the contract.

6. The petitioner filed the writ petition challenging the rejection of its bid and the award of the contract to respondent No.4. It was contended that respondent No. 4 had defaulted in the payment of licence fee and could not have considered eligible and awarded the contract.

7. The case of the official- respondents as reflected in their written statement was that the technical bid of the petitioner was rejected on the ground that it failed to submit the Solvency Certificate as well as renovation plan in its online bid before the stipulated date i.e 30.7.2018. It

had sought time for submitting the same. It submitted a physical copy of the Solvency Certificate only on 06.8.2018 vide letter dated 01.8.2018 after the expiry of last date of receipt of e-bids i.e 30.7.2018. Hence the bid of the petitioner was considered ineligible by the Technical Committee.

8. It was further explained in the written statement that initially tender was floated by the respondent Corporation on 16.5.2018, whereby the bids were invited by the respondent- Corporation from various parties for managing and operating health club, pool, spa, including beauty parlor in Hotel Mount View, Sector 10, Chandigarh on DOBT (Design, Build, Operate, Transfer) and on "as is where is basis". It had been duly stipulated in the tender notice that the facilities of the health club, pool, spa etc should be at par with the international standards of quality service. The last date for submission of the bids was fixed on 25.6.2018. In response to that tender notice dated 16.05.2018 the respondent Corporation received four bids including of the petitioner, respondent no.4 and two other bidders namely M/s Chandigarh Club and Spa and M/s Bonzo Resorts Ltd. On evaluation of the bids by the Technical Committee it was found that the petitioner had neither submitted the copy of the solvency certificate nor attached the renovation plan. After scrutinizing the bids of all the four bidders, the Technical Committee found that only one bidder M/s United House-respondent No. 4 was eligible. Since as per rules, in the first attempt, the single technically qualified bid was not to be accepted it was decided that bids be re-invited by the respondent Corporation.

9. Subsequently the E-tenders were again invited by the respondent Corporation vide advertisement dated 14.7.2018. The last date

for submission of the bids was 30.7.2018. Three bids were received including that of petitioner and respondent no.4. In the technical bid evaluation it was found that the petitioner had again not submitted the solvency certificate as well as the renovation plan and had requested for more time to submit the renovation plan. The Technical Committee of the respondent Corporation on evaluating the technical bids found that only one bidder i.e M/s United House-respondent No.4 was technically eligible.

10. It was stated that the running of the health club facility is very important for a five star hotel, so as to provide requisite facilities to the guests at the hotel. The existing contract was already on extension beyond the contract period of 8 years (5 years + 3 years) which had already expired in February 2017. Further extensions were granted from time to time till the finalization of the new contract.

11. The technical bid of respondent no.4 having been found eligible his financial bid was opened. It had quoted the monthly license fee of Rs.1,60,000/- + taxes i.e Rs.1,88,800/-. It had to undertake the necessary renovation of the entire health club premises on DOBT (Design, Built, Operate and Transfer) basis. Its financial bid was found to be reasonable. Consequently it was awarded the contract by the respondent Corporation for a period of 10 years on Public Private Partnership Mode on a monthly license fee of Rs.1,60,000/- + GST @ 18% on the terms and conditions as mentioned in the tender documents.

12. It was denied that respondent No.4 was the defaulter of the respondent Corporation. It was stated that Respondent no.4 through its proprietor had cleared the outstanding dues of the respondent Corporation

prior to the award of contract in his favour on 13.8.2018 itself and had deposited the amount due to the respondent Corporation amounting to Rs.13,22,021/- vide three Cheques No.003374, 003375 and 003376 dated 10.8.2018 amounting to Rs.4,40,674/-, Rs.4,40,674/- and Rs.4,40,673/- drawn on Bank of Baroda, Chandigarh. The said amount has been realized by the respondent Corporation from respondent No.4.

13. We have heard Ld. Counsel for the parties.

14. The specific requirement with regard to the bidder not being a defaulter is at Sr. No. 9 in the requirements for a Technical bid. It is as under:

> "The Agency should furnish an Undertaking as follows:
>
> > *"The applicant should not be defaulter of any statutory payments such as GST, Income Tax etc".*

The undertaking required to be furnished is that the applicant is not a defaulter of any statutory payment such as GST, Income Tax etc.

14. What was outstanding against respondent No. 4 was dues in respect of licence fee. These cannot be termed as statutory dues.

15. Ld. Counsel for respondent No. 4 states that it was not a wilful default. In fact there was a dispute with regard to the outstanding amount. In any case, as pointed out in the written statement, respondent No. 4 cleared the outstanding dues of the respondent Corporation on 13.8.2018 prior to the award of contract in his favour. He deposited the amount due to the respondent Corporation amounting to Rs.13,22,021/- vide three Cheques No.003374, 003375 and 003376 dated 10.8.2018 amounting to Rs.4,40,674/-, Rs.4,40,674/- and Rs.4,40,673/- drawn on Bank of Baroda,

Chandigarh. The said amount has been realized by the respondent Corporation from respondent No.4.

16. Thus in our view respondent No. 4 did not suffer any disqualification on that account.

17. The petitioner had not submitted the solvency certificate in the e-tender online. It submitted the physical copy of solvency certificate on 06.08.2018 vide letter dated 01.08.2018 after the expiry of last date of receipt of e-bids i.e 31.07.2018. Therefore it was rightly found to be ineligible.

18. Consequently there is no infirmity in the award of the contract to respondent No.4.

19. Accordingly this petition is dismissed.

(RAJIV SHARMA)
ACTING CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

September 24, 2019
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No