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

Date of decision: 23/09/2019

+ **W.P.(C) No.10236/2019**

DARSHAN CHADHA

..... Petitioner

Through: Ms. Amita, Advocate with Mr. Dev
Bharti, Advocate and Ms. Shashi
Bala, Advocate.

versus

**GOVT OF NCT OF DLEHI THROUGH ITS CHIEF SECETARY &
ANR**

..... Respondents

Through: Mr. Ramesh Singh, Standing Counsel
for GNCTD with Mr. Ishan Agrawal,
Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

C.M. No.42224/2019 (exemption)

Exemption is allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) No.10236/2019

Respondent had published a tender bearing No.02/PM (Hr.
Edu.Proj.)/PWD/2019-20 for the work of construction of Synthetic

Football Ground and Basketball Court (Indoor) at Sarvodaya Bal Vidyalaya, Anand Vas (Lok Vihar), Delhi. The petitioner submitted its bid for the project on 22.07.2019.

2. The petitioner is aggrieved by communication dated 23.08.2019 by which the petitioner was informed that the technical bid submitted by the petitioner stood rejected on the ground that Solvency Certificate dated 07.03.2019 submitted was not as per the tender conditions, being more than three months old.

3. Learned counsel for the petitioner submits that such a tender condition is arbitrary. It is further submitted that no such tender condition finds mention in the CPWD Manual; and further that this deficiency was not brought to the notice of the petitioner and thereby, the petitioner was deprived of an opportunity to rectify the same. Additionally, counsel submits that four marks were to be awarded for providing solvency certificate and even in the absence of such marks, the petitioner would still make the cut-off list.

4. Mr. Ramesh Singh, learned Standing Counsel for GNCTD enters appearance on advance copy. He submits that since one of the essential conditions of tender was not complied with by the petitioner, the petitioner's bid was rejected. In this context, reliance is placed upon paras 7.5 and 9.0 of the Tender Document. Reliance is also placed upon paras 8.1.1 and 8.1.2 in support of his submissions that the Solvency Certificate was one of the essential conditions; and only after the tender conditions as per para 8.1.1 were satisfied, was the bidder entitled to be considered; and thus it cannot be said that merely because the bidder secures more than 60 marks, he would be entitled

to be considered for grant of tender. Mr. Ramesh Singh also submits that the bid of another identically placed person, who also did not file the solvency certificate, was also rejected.

5. We have heard the counsel for the parties and have considered their rival submissions.

6. The submissions of the petitioner are three fold; namely (i) inspite of not having an acceptable Solvency Certificate, the petitioner had secured more than 60% marks; (ii) no such condition of the Solvency Certificate being less than three months old is part of the CPWD Manual and (iii) the petitioner should have been given an opportunity to rectify the shortcoming in the Solvency Certificate submitted.

7. The relevant clauses of the tender conditions are being reproduced below:-

“7.0 Initial criteria for eligibility

x x x x
7.5 The bidder should have a solvency of **Rs.1.64 Crore** certified by his Bankers.

8.0 Evaluation criteria

x x x x

8.1.1 The initial criteria prescribed in **para 7.0** above in respect of experience of similar class of works completed, loss, solvency and financial turn over etc. will first be scrutinized and the bidder's eligibility for the work be determined.

8.1.2 The bidder(s) qualifying the initial criteria as set out in para 7.0 above will be evaluated for following criteria by scoring method on the basis of details furnished by them.

(a) Financial strength (Form Maximum 20 marks
'A' & 'B')

- (b) *Experience in similar nature of work during last seven years(Form 'C')* *Maximum 20 marks*
- (c) *Performance on works (Form 'D')-Time over run* *Maximum 20 marks*
- (d) *Performance on works (Form 'D')-Quantity* *Maximum 40 marks*

Total **100**
marks

To become eligible for short listing the bidder must secure at least fifty percent marks in each (Section a, b, c & d) and sixty percent marks in aggregate.

The department, however, reserves the right to restrict the list of such qualified contractors to any number deemed suitable by it.

Note: The average value of performance of work for time overrun and quality shall be taken on the basis of performance report of the eligible similar work.

9.0 Financial information

*Bidder should furnish the following financial information:
Annual financial statement for the last five year in (Form "A")
and solvency certificate in (Form "B")"*

8. A reading of the clauses shows that one of the conditions for application of the tender was to supply a Solvency Certificate as per para 7.5 read with para 9.0 and Form B of the Tender Document, as per which the certificate should not be older than three months.

9. It is not in dispute before us that the Solvency Certificate submitted by the petitioner was more than three months old. This

very essential condition, as per para 9.0, was therefore not met with by the petitioner.

10. Reliance is placed by counsel for the petitioner upon para 2 of the judgment of Supreme Court in ***Poddar Steel Corporation Vs. Ganesh Engineering Works*** 1991 LawSuit (SC) 267, which we reproduced as under:-

“2. In response to a notice inviting tenders by the Diesel Locomotive Works, Indian Railways, in connection with disposal of one lot of Ferrous Scrap, a number of tenders were submitted by the appellant, the respondent No.1 and other intending purchasers. The tenders of the respondent No.1 and some other bidders were rejected as defective and the appellant’s offer being the highest was accepted, and accordingly the appellant deposited a sum of about Rs.15 lacs. The respondent No.1 challenged the decision by a writ petition before the Allahabad High Court contending that there was no defect in its tender and that the tender of the appellant could not have been validly accepted as the necessary condition of payment of Rs.50,000/- as earnest money with the tender had not been complied with. The application was resisted on the grounds (i) that the respondent No.1 having not deposited the earnest money at all was not entitled to a consideration of its tender and has no locus standi in the present matter; and (ii) that the appellant has substantially complied with the requirement by sending with its tender a Banker’s cheque marked and certified by the Union Bank of India as good for payment. The High Court accepted the appellant’s first ground, holding that the tender of the respondent had been rightly rejected for failure to deposit the earnest money, but allowed the writ petition on the finding that the appellant also did not satisfy the condition No.6 of the tender notice as the earnest money was offered by the Banker’s Cheque of a bank other than the State Bank of India mentioned in the said clause. The High Court directed the authorities to consider the other valid tenders and further observed that should the other tenders

be found to be unacceptable it would be open to the authorities to invite fresh tenders. The present appeal is directed against this judgment.”

However, we find that the precedent cited would not apply to this case for the reason that a valid Solvency Certificate, in our view, was one of the essential conditions of the tender.

11. So far as the argument raised by the petitioner of the respondents not having given to him an opportunity to rectify the deficiency by non-communication of the deficiency, in our view, there was no such obligation or stipulation in the tender conditions.

12. In view of the above, we find no merit in the petition. Dismissed.

C.M. No.42223/2019

13. Since the main writ petition is dismissed, this application also stands disposed of.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 23, 2019

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