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

+ **W.P.(C) 2484/2019 & CM Nos. 11553-11554/2019**

**S. P. SINGLA CONSTRUCTIONS PRIVATE LIMITED
AND ANR.**

..... Petitioners

Through Mr Akhil Sibal, Senior Advocate
with Mr Anirudh Wadhwa, Mr Pradeep
Chhindra, Mr Parinay Chhindra, Mr Parinay
Vasandani, Mr Bhargav Thali, Advocates.

versus

RAIL VIKAS NIGAM LIMITED Respondent
Through Mr Udit Seth, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
12.03.2019

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VIBHU BAKHRU, J

1. The petitioners have filed the present petition, *inter alia*,
praying as under:-

“Issue a Writ of Mandamus or any other
appropriate writ, order or direction to the
Respondent, to open and consider the bid submitted
by the Petitioner in response to the Notice Inviting
Tender dated 31.10.2018 issued by the Respondent
for construction of 24x76.20 M SPAN Important
Bridge over river Ganga at Allahabad between
Jhusi and Daraganj Station of NER in the State of
Uttar Pradesh, India, on merits and in accordance
with law;”

2. The controversy in the present petition relates to not opening of

petitioner no.1's bid for construction of 24 x 76.20 M SPAN Bridge over river Ganga at Allahabad between Jhusi and Daraganj Station of NER, in the State of Uttar Pradesh. Admittedly, the deadline for submission of the bid was 21.12.2018 at 11.00 hours. The said time was subsequently extended on three occasions. First, it was extended to 22.01.2019; second, it was extended to 22.02.2019; and finally it was extended to 06.03.2019.

3. There is no dispute that the bids were to be submitted before 11.00 hours on 06.03.2019. Admittedly, there was some delay in petitioner no.1 submitting its bid, which was submitted at 11.04 hours.

4. The learned counsel appearing for the respondent points out that the bids were to be dropped in a tender box, which was sealed at 11.00 hours on 06.03.2019 (the deadline so fixed). The petitioner had failed to drop its tender in the said box and, therefore, furnished it to the officers of the respondent at 11.04 hours.

5. Mr Sibal, the learned Senior Counsel appearing for the petitioners has contended that notwithstanding that the bid was submitted beyond the deadline, it could be considered as the responsive bid in terms of clause 29.2 and 30 of the tender documents. He submits that the examination of the bid would reveal that there is no material irregularity, and therefore the respondents should have exercised its discretion to accept the said bid.

6. Before proceeding further, it would be relevant to refer to clauses 22, 23, 29 and 30 of the tender documents which read as

under:-

“22. Deadline for Submission of Bids

22.1 Bids must be received by the Employer at the address and not later than the date and time indicated in the BDS.

22.2 The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

Late Bids

23.1 The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

29. Determination of Responsiveness

29.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB 11.

29.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

(a) if accepted, would:

(i) affect in any substantial way the scope, quality, or

performance of the Works specified in the Contract; or

(ii) limit in any substantial way, inconsistent with the

Bidding Document, the Employer's rights or the Bidder's obligations under the proposed Contract; or

(b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

29.3 The Employer shall examine the technical aspects of the bid submitted in accordance with ITB 16, Technical Bid, in particular, to confirm that all requirements of Section 5 (Works Requirements) have been met without any material deviation or reservation.

29.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

30. Nonconformities, Errors, and Omissions

30.1 Provided that a bid is substantially responsive, the Employer may waive any nonconformities in the bid that do not constitute a material deviation, reservation or omission.

30.2 Provided that a bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or

documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.

30.3 Deleted.”

7. It is clear from the plain reading of the aforesaid clauses that clause 29 has no application whatsoever in respect of a bid that has not been submitted before the deadline. In the event, the bid is not furnished before the specified time, it is not a bid at all and, therefore, the question of the said bid being responsive or not responsive does not arise.

8. In view of the above, this Court finds no infirmity with the decision of the respondent in not opening the bid. The respondent is bound by the terms of the notice inviting tenders, and in terms of clause 22.3 of the tender documents, are required to return the said bid unopened to the petitioner.

9. It was also submitted on behalf of the petitioners that only two other bidders have submitted their bids and thus, the number of bids are insufficient for a competitive bidding. In this regard, it is necessary to clarify that if the respondent finds that adequate number of competitive bids have not been received (as this Court is informed that only two other bidders have participated), it is always open for the

respondent to take an appropriate decision in this regard including to call for fresh tenders.

10. The petition is dismissed. All pending applications stand disposed of.

MARCH 12, 2019

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VIBHU BAKHRU, J

