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

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Date of Decision: 19.03.2019

% **W.P.(C) 2771/2019**

DLF HOME DEVELOPERS LTD & ANR Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv.

Mr. Darpan Wadhwa, Sr. Adv. with
Ms. Meghna Mishra, Ms. Manmeet
Kaur and Ms. Aishwarya Mohapatra,
Advs.

versus

DELHI INTERNATIONAL AIRPORT LTD & ANR..... Respondent

Through: Mr. Arvind K. Nigam, Sr. Adv.

Mr. Akhil Sibal, Sr. Adv. with Ms.
Vijaylakshmi Menon, Mr. Anish
Kapur, Mr. Gurmehar S. Sistani, Ms.
Suman Yadav, Mr. Dhritiman Roy,
Mr. Shobhit Ahuja, Adv. for R1.
Mr. Digvijay Rai, Sr. Adv. with Mr.
Kustubh Singh, Adv. for AAI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

C.M. No. 12799/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 2771/2019 & C.M. No. 12797/2019, C.M. No. 12798/2019

1. We have heard learned Senior Counsels for the petitioner and respondent Nos. 1 and 2 and we proceed to dispose of this petition.
2. The petitioner seeks a writ of certiorari, setting aside/ quashing the decision of respondent No.1 conveyed through an email communication dated 17.03.2019, whereby respondent No.1 has refused to consider the bid of the petitioner No.1 submitted in response to the RFP issued on 16.02.2019 in relation to a commercial development project at Gateway and Downtown Districts of Aerocity, New Delhi.
3. The petitioner seeks a direction to respondent No.1 to consider the petitioner's bid in response to the said RFP. In the alternative, the petitioner seeks the setting aside of the entire bidding process undertaken in pursuance of the RFP issued on 16.02.2019.
4. The aforesaid RFP was issued by the respondent No.1, which prescribed the time line as follows:

<i>Indicative Timeline and Estimated dates</i>	<i>Key Event Description</i>
<i>T= 16 February 2019</i>	<i>Launch of RfP process</i>
<i>T + 20 days</i>	<i>Last date for pre-bid meetings</i>
<i>T + 20 days</i>	<i>Last date for submission in writing of</i>

	<i>request for clarifications/ amendments, if any, to the RfP by Bidders to be received by DIAL BY 1700 hours (Indian Standard Time)</i>
<i>T+21 days</i>	<i>Last date for request for RfP by interested parties</i>
<i>T+ 25 days</i>	<i>Issuance of clarifications by DIAL</i>
<i>T+28 days</i>	<i>Last date for Project Site visits</i>
<i>T + 28 days</i>	<i>Data Room closes</i>
<i>T + 28 days = 15 March 2019</i>	<i>Bid submission Deadline</i>
<i>T + 33 days</i>	<i>Intimation of Selected Bidder</i>
<i>T + 43 days</i>	<i>Execution of the Project Agreements and payment of first tranche of RSD and Bid Process Cost</i>

5. As per the said time line, the last date for issuance of clarifications by respondent No.1 was 12.03.2019. The grievance of the petitioner is that after the expiry of the said period, the respondent No.1 sought to make substantial changes and amendments in the RFP, which were communicated to the petitioner on 13.03.2019 at 01.38 hrs. These amendments, inter alia, relate to change of site in respect whereof the bids were invited.

6. The case of the petitioner is that due to sudden change in the fundamental term of RFP, the petitioner had to revise its bid and was

fighting against time to meet the deadline fixed for submission of the bids, which was 05.00 P.M. on 15.03.2019. The petitioner claims that it had taken effective steps of arranging bid guarantee of Rs. 35 crores well in time, and was able to prepare its bid. However, on account of the traffic conditions, the petitioners representative could reach the office of respondent No.1 at the designated place a little later than 05.00 P.M. The petitioner claims that its bid was not accepted by respondent No.1 despite their being only a marginal delay. It is in this background, the petitioner has preferred the present writ petition.

7. When the matter was taken up on 18.03.2019, Mr. Nigam – Learned senior counsel for respondent No.1 on instructions, submitted that the petitioner did not reach with its bid soon after 05.00 P.M., as claimed by the petitioner. He submits that the CCTV Footage and the CDR records of the officers of the petitioner, if produced, would show that the petitioner's representatives reached the office of respondent No.1 only at about 06.07 P.M. He further submitted that two other bidders had submitted their bids in time. In any event, the said aspect has become academic, considering the fact that the bids which were received were opened and it has transpired that the financial bid claimed to have been made by the petitioner (@ 2750 per square metre per annum), is way below the financial bids received from other two responsive bidders.

8. In this background, we had required respondent to produce the original record. The file relating to the bid in question has been produced in original for the perusal of the Court. The same has been perused. The record

shows that the technical evaluation on the responsive bids was done on 16.03.2019, and the two bids submitted by Bharati Reality Limited and Embassy Property Developers Private Limited have been found to be qualified/ responsive. So far as the financial bids are concerned, we find that the bids made by both the responsive bidders, namely Bharati Reality Limited and Embassy Property Developers Private Limited are far higher than the financial bid that the petitioner claims to have submitted. In this regard, we may refer to the email communication dated 18.03.2019 sent by the petitioner to the respondent, a copy whereof has been placed on record at page 1049. The same states that the petitioner offered lease rent of Rs. 2750 per square meter per annum.

9. Mr. Sethi, learned senior counsel for the petitioner has submitted that merely because the petitioner's financial bid may be lower compared to the offer made by the other two responsive bidders, that is not the end of the matter. He submits that if the petitioner's bid documents are directed to be accepted by respondent, it is likely that the petitioner may be called for negotiation, and it does not necessarily follow that one of the two other responsive bidders, who had made higher bids, would be selected for the purpose of award of the tender. In this regard, he places reliance on Clauses 6.2.5, 6.2.6 and 6.3 of the RFP, which reads as follows:

“6.2.5 Pursuant to the evaluation of the Financial Bid, DIAL, at its discretion, will declare as the Selected Bidder, being the Eligible Bidder whose financial Bid (in DIAL's sole discretion) has been determined to be substantially conforming to the requirements identified by DIAL, and who has offered the most advantageous Bid to DIAL, in accordance with this RfP. DIAL

expressly reserves the right to reject any, or all, of the Eligible Bidders, and/ or to not invite an Eligible Bidder to proceed further, or otherwise negotiate with the Eligible Bidders in respect of the Project.

6.2.6 To assist in the examination, evaluation and comparison of the Bids, DIAL may, at its absolute discretion, ask any Bidder for clarification of its Bid. The request for clarification and the response shall be in writing or e-mail, unless DIAL believes, in its absolute discretion, that a clarification meeting with the Bidder is required. DIAL may require the Bidder to procure an interview of the key personnel of the Bidder with DIAL for a discussion or clarification on the Bid.

6.3 Final Evaluation and Discussions

DIAL shall evaluate the Bids as per Clause 6.2. Following such evaluation, DIAL may invite such Bidder(s) who shall have submitted in DIAL's sole opinion, unconditional and compliant Bids, for further discussions, pursuant to which discussions DIAL may require such Bidder(s) to revise their Bids, in order to arrive at the most advantageous Bid and to announce the Selected Bidder”.

10. He also places reliance on Clauses 4.15, which reserves the right of the respondent No.1 to accept or reject any bid. The said clause reads as follows:

“4.15 Right to Accept/ Reject any or all Bids

4.15.1 Notwithstanding anything contained in this RfP, DIAL reserves the right to inter alia accept or reject any Bid and/ or to cancel or withdraw the Selection Process, reject all Bids, call for fresh Bids or restart the Selection Process, at any time, without any liability or any obligation for such acceptance, rejection or annulment and without assigning any reasons thereof.

4.15.2 If any disqualification or rejection occurs after the Bids have been opened or post intimation of the Selected Bidder and/ or if the Selected Bidder is disqualified or rejected for any reason whatsoever, DIAL reserves the right and discretion, and keeping in view the time sensitivity of the Project, to either:

(i) invite other Eligible Bidder(s) for further negotiations; or

(ii) take any measure as may be deemed fit in the sole discretion of DIAL including but not limited to annulment of the entire Selection Process and/ or inviting fresh Bids. ”

11. On the other hand, Mr. Nigam has submitted that the primary grievance raised by the petitioner itself has no merit. He submits that even after the amendment of the RFP affected on 13.03.2019, the petitioner, not once, sought extension of time for submission of the bid. No such request was received from any of the five other parties, who had obtained the tender document. In fact, as noticed above, two of the interested parties also submitted their bids in time. Thus, the grievance now sought to be raised by the petitioner is ill founded. He further submits that the other aspects raised by the petitioner are all in the realm of conjecture and are academic.

12. Having heard learned senior counsels and perused the record, we are of the view that the petitioner is not entitled to any relief. Even though the changes in the RFP document, which were affected on 13.03.2019, may have been a reason good enough for the petitioner to seek extension of date for submission of the bid documents by the bidders, the petitioner actually never sought any such extension. Pertinently, none of the other parties – who had obtained the RFP document, made any such request and, as noticed above, two of them also submitted their responsive bids within time.

13. Thus, in our view, the change in the RFP document is only a red herring raised by the petitioner, to justify its belated submission of the bid document. When two of the other bidders could submit their respective bids in time, there is no reason why the petitioner could not have done so. That apart, the records produced by the respondent show that the other two bidders, who had submitted their responsive bids, have been found to be technically qualified and their financial bids are also far higher than the financial bid made by the petitioner.

14. In our view, reliance placed by the petitioner on Clauses 6.2.5, 6.2.6 and 6.3 of the RFP is conjectural and of no avail. Merely because the respondent has a right to negotiate, or to accept or reject any or all the bids, does not follow that they are bound to do so. In any event, the said exercise can be undertaken only in respect of those bidders, who have submitted their bids in time and are found to be responsive bidders, and not in respect of a party who has not submitted its bid in time.

15. We find no merit in this petition. Dismissed.

VIPIN SANGHI, J.

REKHA PALLI, J.

MARCH 19, 2019

N.Khanna