GAHC010131712020

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil) 1557/2020

1:STATE OF ASSAM AND ANR.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, URBAN DEVELOPMENT DEPTT., DISPUR, GHY-06, ASSAM

2: THE DIRECTOR
MUNICIPAL ADMINISTRATION
ASSAM
DISPUR
GHY-0

VERSUS

1:ASSAM ELECTRIC STORE AND NATASAKEE INCORPORATION AND ANR.
A JOINT VENTURE, HAVING REGD. OFFICE/HEAD OFFICE AT R.N.B.ROAD, P.O. KOKRAJHAR- 783370 (BTC), ASSAM AND 414, PURBI COMPLEX, AT ROAD, GHY-01, DIST.- KAMRUP, ASSAM, REP. BY MR. BIMAL KUMAR DUGAR, M/S ASSAM ELECTRIC STORE, A COMPANY HAVING ITS REGD. OFFICE/H.O. AT R.N.B. ROAD, P.O. KOKRAJHAR- 783370 (BTC), ASSAM, AND BRANCH OFFICE AT ULUBARI, SOUTH SARANIA, BYE-LANE NO.1, H/N-09, GHY-07, ASSAM, A CONSTITUTED LAWFUL ATTORNEY OF THE JOINT VENTURE

2:TENDER EVALUATING COMMITTEE FOR EVALUATING RESPONSES FROM BIDDERS
IN RESPONSE TO NOTICE INVITING TENDER DATED 04.05.2020 FLOATED BY THE RESPONDENT AUTHORITIES FOR DESIGN
SUPPLY
INSTALLATION AND COMMISSIONING OF SOLAR STAND ALONE ALL IN ONE LED STREET LIGHTING SYSTEM WITH 7.0M GALVANIZED OCTAGONAL POLE AT ULBS OF ASSAM
DIRECTORATE OF MUNICIPAL ADMINISTRATION
ASSAM
DISPUR
GHY-0

Advocate for the Petitioner : GA, ASSAM

Advocate for the Respondent : MR. S BANIK

Linked Case : WP(C) 2812/2020

1:ASSAM ELECTRIC STORE AND NATASAKEE INCORPORATION
A JOINT VENTURE
HAVING REGD. OFFICE/HEAD OFFICE AT R.N.B.ROAD
P.O. KOKRAJHAR- 783370 (BTC)
ASSAM AND 414
PURBI COMPLEX
AT ROAD
GHY-01
DIST.- KAMRUP
ASSAM
REP. BY MR. BIMAL KUMAR DUGAR
M/S ASSAM ELECTRIC STORE
A COMPANY HAVING ITS REGD. OFFICE/H.O. AT R.N.B. ROAD
P.O. KOKRAJHAR- 783370 (BTC)
ASSAM
AND BRANCH OFFICE AT ULUBARI
SOUTH SARANIA
BYE-LANE NO.1
H/N-09
GHY-07
ASSAM
A CONSTITUTED LAWFUL ATTORNEY OF THE JOINT VENTURE

VERSUS

1:THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
URBAN DEVELOPMENT DEPTT.
DISPUR
GHY-06
ASSAM

2:THE DIRECTOR
MUNICIPAL ADMINISTRATION
ASSAM

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3:TENDER EVALUATING COMMITTEE FOR EVALUATING RESPONSES FROM BIDDERS
IN RESPONSE TO NOTICE INVITING TENDER DATED 04.05.2020 FLOATED BY THE RESPONDENT AUTHORITIES FOR DESIGN
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DIRECTORATE OF MUNICIPAL ADMINISTRATION
ASSAM
DISPUR
GHY-06

Advocate for the Petitioner : MR. S BANIK
Advocate for the Respondent : GA
ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 14.10.2020

Heard Mr. D. Saikia, learned senior counsel, assisted by Mr. P. Nayak and Mr. A. Chaliha, learned standing counsel for the applicants. Also heard Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. S. Banik, learned counsel for the respondent no.1. The tender evaluation committee is arrayed as the proforma respondent no.2, however, as the said committee is an integral part of the applicants, their interest appears to be taken care of by the applicants. Hence, with the consent of the learned senior counsel for both sides, the matter has been heard.

2) The respondent no.1 herein is the writ petitioner in the connected writ petition, which was filed, amongst others, to challenge the rejection of the technical bid submitted by it. Accordingly, while issuing notice of motion, this Court by order dated 26.06.2020, passed interim direction to the effect that even if the tender process is finalized, awarding of the

contract may be done only with the leave of the Court. This interlocutory application has been filed for seeking leave of the Court for awarding the contract and/or to issue work order pursuant to the NIT no. DMA(T)08/2020/206 dated 4th May, 2020.

3) The learned senior counsel for the applicants has relied on the affidavit- in-opposition filed by the respondent no.2 in the accompanying writ petition and on this present application. It is submitted that the respondent did not have the requisite qualification and, as such, there cannot be any stay of finalization of tender process at the behest of such unqualified bidder. In this connection, it is submitted that the respondent had furnished documents relating to completion of work value of Rs.12,23,84,218/-, wherein the lead JV associate was one M/s. Natsakee Incorporation, whereas as per sub-clause 5.3 of clause 5.0 of the bid/tender document the bidder/ lead-bidder ought to have experience of doing single work of at least 35% of the work for which bid was invited, as such, the respondent did not fulfill the eligibility condition as the documents on which the respondent no.1 has relied upon are the documents relating to the JV partner of the petitioner, i.e. M/s Natasakee Incorporation. In continuation of above, it is also submitted that under sub-clause 5.5 of clause 5.0 of the bid/ tender document, being the lead- bidder, the respondent was required to have minimum annual turnover of Rs.30.00 crore, in last 3 financial years, whereas the documents appended with the bid disclosed that the average annual turnover of the respondent was only Rs.22.8066 crore, which fell short of the requirement. It is also submitted that the respondent had not assailed any of the conditions contained in the tender/ bid document and, as such, it is not open to the respondent to urge upon any matter which is not covered by the prayer made in the writ petition. It is submitted that the tender evaluation committee held its meeting under the Chairmanship of the Director In-charge and Joint Secretary to the Govt. of Assam, Urban Development Department on 02.09.2020 for opening of tenders and found two bidders having two technically qualified, who were found as L-1 and L-2 bidders. It is submitted that respondent and one other bidder were found not technically qualified. It is submitted that the tender was issued for ”Design, Supply, Installation and Commissioning of Solar Stand Alone All-in- One LED Street Lighting System with 7.0 Galvanized Octagonal Pole at ULBs of Assam”, which is projected to be completed within 270

days. Accordingly, it is submitted that public interest tilts in favour of early completion of the work, otherwise the money allocated for the work would lapse. It is also submitted that in terms of the interim directions contained in the order dated 26.06.2020 in the connected writ petition, the applicants could not finalize the tender and issue work order, which in turn is causing a set back to the developmental activities in the State, as such, this application for modification. The learned senior counsel for the applicants has also referred to the case of (1) *Central Coalfields Ltd. Vs. SLL – SML (Joint Venture Consortium & Ors.), (2016) 8 SCC 622,* (2*) Raunaq International Ltd. Vs. I.V.R. Construction Ltd., (1999) 1 SCC 492*, and (3) *Tata Cellular Vs. Union of India, (1994) 6 SCC 651.*

4) Per contra, opposing this application, the learned senior counsel for the respondent no.1 has relied on the writ petition and affidavit- in- opposition filed in connection with this interlocutory application. It is submitted that while the Government of Assam, Urban Development Department had sanctioned administrative approval for a sum of Rs.75.00 Crore for the work, the work order was issued for an estimated amount of Rs.40.00 Crore. It is submitted that as the bids have been opened, the respondent no.1 is aware that the L-1 bidder had quoted the rate of Rs.99,540/- per unit for all four zones and that the L-2 bidder had quoted the rate of Rs.1,30,600/- per unit for two zones and Rs.1,39,800/- for remaining two zones. However, the respondent no.1 had quoted the rate of Rs.40,000/- per unit for all zones. The respondent no.1 was informed that the applicants would be procuring 6250 units for the Urban areas of the four zones of the State and, as such, it is submitted that if the applicants procure the lighting system through L-1 bidder, the State exchequer would be paying a sum of Rs.62.21 Crore to the L-1 bidder, i.e. Rs.22.21 Crore above the estimated value of the tender, which is 55% above the estimated price or nearly 1.5 times above the price per unit quoted by the respondent no.1. It is further submitted that the respondent no.1 had quoted the bid rate of Rs.40,000/- per unit, which would cost the applicants a sum of Rs.25.00 Crore for 6250 units and, as such, the State would be saving a sum of Rs.15.00 Crore below the estimated amount equivalent to 37.5% below the estimated price. It is also submitted that when the JV consortium partner of the respondent no.1 fulfills all the eligibility criteria and that the documents of Joint-Venture Partner can be relied upon, reliance is placed

on the case of *New Horizons Ltd. vs Union of India & Ors. (1995) 1 SCC 478.* Moreover, it is submitted that as per the CVC guidelines, vide OM No. 12-02-1-CTE-6 dated 17th December, 2002, it was provided that for civil/ electrical works, the average financial turnover for last 3 (three) financial years is envisaged at 30% of the estimated cost, which if adhered to, would have technically qualified the respondent no.2. Hence, it is submitted that overwhelming public interest would not be in the interest would not be in allowing the tender to proceed.

6) The Court finds that in a tender having estimated value of Rs.40.00 Crore, the purported bid of the respondent no.1 is Rs.40,000/- per unit or Rs.25.00 Crore compared to purported projection by the respondent no.2 that the bid of the L-1 bidder was for a sum of Rs.99,540/- per unit or Rs.62.21 crore. As such, if the projection made by the respondent no.1 is correct, then the bid of the L-1 bidder would be Rs.59,540/- per unit or Rs.37.21 crore higher than the bid of respondent no.2. Therefore, the question whether the rejection of the technical bid of the respondent no.2 was proper or not is required to be examined in the writ petition. The distinguishable features of this case from the facts of the cases cited by the learned senior counsel for the applicants is that in this present case in hand is that when the respondent no.2 has submitted its bid for a sum of Rs.25.00 Crore, if the applicants are permitted to finalize the tender, as per projection made by the learned senior counsel for the respondent no.1, there is every likelihood that the tendered items would be purchased at roughly 1.5 times higher price than the price quoted by the respondent no.2.

7) Under such circumstances, when the respondent no.1 is found to be ready and willing to supply the tendered items at Rs.40,000/- per unit, the Court has no material to hold that public interest is tilting in favour of allowing the applicants to finalize the tender bearing NIT no. DMA(T)08/2020/206 dated 4th May, 2020, which would have the effect of allowing the applicants to purchase the tendered items at Rs.99,540/- per unit. Therefore, the leave as sought for to finalize the said tender bearing NIT no. DMA(T)08/2020/206 dated 4th May, 2020 is refused. The Court is of the considered opinion that the issue raised in the writ petition is required to be heard.

7) Needless to mention herein that the question of eligibility of the respondent no.1 in respect of clause 5.3 and 5.4 of the bid document is kept open to be decided in the writ petition. Moreover, before parting with the records, it is clarified that the Court has not entered into the merit of the issues raised in the writ petition, as such, it is provided that any observations made herein shall not cause any prejudice any to the parties.

JUDGE

Comparing Assistant