

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

CWP-2505-2020

Date of Decision: 10.02.2020

Aron Hurley Koncepts Pvt. Ltd.

. Petitioner

Vs.

Union of India and others

. Respondents

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE JASGURPREET SINGH PURI**

Present: - Mr.Tushar Sharma, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J.

The petitioner has questioned the action of respondent No.3, cancelling the tender of item No.2 of tender No.P-9200/41 and its re-tender vide tender No.P-9200/69 dated 15.1.2020, on the ground of being unreasonable, *mala fide* and contrary to the provisions contained in Purchase Manual, 2015 issued by respondent No.2.

In brief, respondent No.3 had issued a notice inviting tender on 8.9.2017 for supply, installation and commissioning of 4 nos. air/water cooled electrodynamic shakers of 4000 kgf. The petitioner has allegedly participated in the bid process and submitted his bid on 18.10.2017. He had also allegedly submitted the price bid besides submitting the techno-commercial bid. On 06.02.2018, the petitioner was informed that "*your above mentioned quotation is technically rejected by our technical experts as your firm has not provided supply order(s), installation & Commissioning certificates and also legal notarized affidavit for the claims about supply of the equipment(s) in last 07 years from the last date of submission of bids. All supply orders provided are*

of beyond the specified time limit. Hence unacceptable on account of pre-qualification criteria for original equipment manufacturer's experience. So firm's bid for 4000 kgf shaker not qualified and rejected". It is alleged that while the petitioner was pressing upon for recalling of the aforesaid order, respondent No.3 issued a fresh NIT i.e. tender No.P-9200/69 on 15.1.2020 for acquiring vibration shaker in question.

The grievance of the petitioner is that in the fresh tender some arbitrary and whimsical conditions have been incorporated which find mentioned in Section 5 of Annexure A attached to the NIT and are being reproduced herein for ready reference: -

"Original Equipment Manufacturer's Experience

(i) The OEM should have supplied, installed and commissioned at least one Electrodynamic shaker system (till last date of submission of bids) of Air cooled/water cooled of 4000 kgf or higher force rating capacity to be eligible for submitting bids for 4000 kgf shakers.

(ii) The OEM should provide copy/copies of the Supply order(s) installation and commissioning certificates to authenticate their claim at point 1(i). If bidder firm fails to submit the same, this will lead to rejection of technical bids on account of failure in Original Equipment Manufacturer's experience.

(iii). The claimed item about supply of the equipment(s) may be verified by a committee nominated by Director TBRL by visiting at the location where claimed shaker is supplied and installed. In case of Foreign

OEM respective embassy help can be taken to verify the claim of the OEM. The term of reference will be shaker force rating capacity. It is bidder firm's responsibility to arrange the necessary permission/approval for demonstration of shaker at location where shaker is installed, prior to visit by the committee. If bidder firm fails to demonstrate this by any reason within a month i.e. the shaker physical verification, its force rating capacity and in committee's report satisfactory response is not found, this will lead to rejection of technical bids on account of failure in Original Equipment Manufacturer's experience.

(iv) Foreign OEM should have a service centre in India for after sale service.

(v) A committee nominated by Director TBRL may visit the Original Equipment Manufacturers (OEM) premises for verification of manufacturing facility of OEM in terms of equipment, machinery, manpower, equipment at their premises. Inadequate infrastructure and capacity will lead to rejection of technical bids on account of infrastructure to manufacture/test the demanded failure in Original Equipment Manufacturer's experience.

(vi) Capacity as per supply order will be considered for reference. Any vender justifying enhancement of capacity of shaker over supply order mentioned capacity will not be considered.

The petitioner is basically aggrieved against Clause (iii) of the aforesaid conditions.

Counsel for the petitioner has vehemently argued that these conditions have been incorporated by respondent No.3 with a *mala fide* intention to keep the petitioner at bay.

We have heard counsel for the petitioner and perused the record with his able assistance. These conditions, which have been imposed and are being alleged as arbitrary, are applicable to all the bidders and is not going to exclude the petitioner from participating in the bid in any manner. Thus, the allegation and agitation of the petitioner in this regard is totally ill-founded and misconceived for which no writ of mandamus can be issued for declaring the action of respondent No.3 as illegal or unreasonable. Hence, keeping in view the facts and circumstances of the case, we have found that the present petition is without any merit and the same is thus hereby dismissed though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(JASGURPREET SINGH PURI)
JUDGE

10.02.2020
Vivek

Whether speaking /reasoned : *Yes/No*
Whether Reportable : *Yes/No*