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

+ W.P. (C) 3108/2020

M/S PASCHATYA ENTERTAINMENT PVT. LTD..... Petitioner

Through: Mr. Vatsal Kumar, Adv.

Versus

SOUTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through: Mr. Kunal Vajani with Mr. Varun Ahuja, Advs.

**CORAM**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

**ORDER**  
**12.05.2020**

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**CM APPL. 10792/2020**

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

**W.P. (C) 3108/2020 & CM APPL. 10791/2020**

1. The petitioner has preferred the present writ petition to seek issuance of a writ of mandamus directing the respondent SDMC to extend the date of submission of online bid and uploading of documents in respect of notice inviting E- Auction dated 16.03.2020 bearing No. AC/RP Cell/SDMC/2020/D-1176.

2. The case of the petitioner is that the petitioner is an experienced contractor engaged in managing parking lots. The respondent issued the

notice inviting E-Auction dated 16.03.2020 bearing No. AC/RP Cell/SDMC/2020/D-1176 for allotment of six multi-level underground authorised parking sites falling under the jurisdiction of the respondent – SDMC. These parking lots are situated at Hauz Khaz, Munirka, New Friends Colony, Kalkaji, Rajouri Garden and Subhash Nagar. The time granted for submission/ uploading of documents online, and online submission of EMD was between 17.03.2020 and 08.04.2020. The Pre-Bid meeting was scheduled on 25.03.2020 and the date of E-Auction bidding was fixed as 22.04.2020. However, on account of the lockdown imposed by the Government due to the COVID-19 pandemic, the respondent extended the date of submission and uploading of documents and online submission of EMD to 22.04.2020 by issuing a Corrigendum. Accordingly, the dates for E- Auction bidding were also pushed to a later date.

3. Once again, the respondent issued a second Corrigendum on 22.04.2020 – extending the date for submission and uploading of documents and online submission of EMD till 27.04.2020 and, once again, the date for holding the E-Auction bidding was pushed further.

4. The respondent issued a third Corrigendum on 24.04.2020 – extending the date and time for submission and uploading of documents and online submission of EMD till 17:00 hrs of 27.04.2020. The respondents also granted two week's time after completion of lockdown period, for submission of notarised affidavits on stamp paper, police verification/ character certificate, as required by the NIT conditions. There were several other relaxations granted by the Corrigendum with regard to the submission of documents.

5. The submission of learned counsel for the petitioner is that the NIT

required submission of several documents relating to the financial standing of the bidder. In this regard, he has referred to clause 11 of the Schedule/ Data Sheet for the E-Auction, dated 16.03.2020 (Annexure P2). The documents initially required to be submitted and uploaded were the following:

- “1. No dues certificate issued under the signatures of Assistant Commissioner (RP Cell), SDMC.*
- 2. At least 2 years experience of running of parking.*
- 3. Police verification & Character verification report of the bidders shall be required to be attached with the technical offer. In case of registered company/ partnership firm, the police verification & Character verification report of all the members of Board of Director/ Partners/ Proprietor shall be required to be attached with the technical offer.*
- 4. The details of registration of EPF & ESI shall be required to be submitted with the technical offer.*
- 5. Income Tax Returns of the bidder during the last three preceding financial years i.e. 2016-17, 2017-18 & 2018-19.***
- 6. The financial turnover of the bidder during the last 3 preceding financial years i.e. 2016-17, 2017-18 & 2018-19 certified by C.A.***
- 7. Basic information schedule -A,B,C,D, (as per prescribed formats mentioned in the Terms and Conditions)*
- 8. Annexure-15 (as per prescribed formats mentioned in the Terms and Conditions)*
- 9. Annexure-03 (as per prescribed formats mentioned in the Terms and Conditions)*
- 10. Annexure-04 (as per prescribed formats mentioned in the Terms and Conditions).*
- 11. Annexure-06 Power of Attorney (if applicable, as per Terms and Conditions )*
- 12. Copy of PAN card, Aadhar Card and GST Number.*
- 13. Two passport size photographs and proof of residential address.*
- 14. Signed Terms and Conditions.*
- 15. DIN (Directors Identification Number) in case of*

*contractor company, as issued by Ministry of Corporate Affairs.*

*\* All documents must be duly signed and attached by bidders.*

*\*\* The bidders are required to submit original copy of the Affidavits (as applicable) as per the Auction Document as uploaded on the E-Auction website to R.P. Cell, SDMC, on or before 09/03/2020 upto 17:00 hrs.” ( emphasis supplied)*

6. Learned counsel for the petitioner submits that the petitioner, not being able to submit documents to show its financial capacity, made a representation to the respondents on 24.04.2020. The petitioner pointed out that his Chartered Accountant could not provide the requisite certificates, since he was not able to access his records due to the lockdown.

7. Mr. Kumar, learned counsel for the petitioner submits that the petitioner has the financial capacity and is otherwise eligible to participate in the tender in question, and the petitioner may be permitted to give an undertaking that he would provide the requisite certificates and he should be provisionally permitted to participate in the further tendering process. We may observe that as per the present Schedule, the date for conduct of E-Auction is 13.05.2020 i.e. tomorrow.

8. Learned counsel for the respondent SDMC has appeared on advance notice. Mr. Vajani, who appears for the SDMC submits that apart from the petitioner, no other contractor made a similar request for extension of time for submission and uploading of documents and deposit of EMD. He further submits that the petitioner is habitual in making such like requests and, even in the past, the petitioner made a similar request when no lockdown was in place. He further submits that the respondent received seven bids in response to the NIT in question, which is similar to the number of bids that the respondent normally receives to such like tenders. Therefore, there has

been adequate representation in the tendering process. He further submits that the technical bids of those contractors who had submitted their bids were opened on 28.04..2020 and, three out of the seven bidders were found to be technically qualified. He submits that there have been occasions when only one bidder has evinced interest in respect of a particular parking site. However, in the present case, the respondent SDMC has three bids for each of the parking sites.

9. At this stage itself we may observe that, that learned counsel for the petitioner states, on instructions, that normally there are 18 to 20 bidders for such like tenders, and the number is considerably reduced to only 7 bidders in the present case.

10. On this factual dispute, we are in no position to rule and, since Mr. Vajani has made the aforesaid statement on the basis of the written instructions that he states he has received, we are inclined to accept that statement.

11. Mr. Vajani has pointed out another important facet to submit that the tendering process should not be interdicted. He submits that the parking lots in respect whereof the tender has been floated, are being managed by DIMTS on cost plus basis. The respondent is incurring huge expenses and loss of revenue in the process, and it has become a drain on the coffers of the respondents. The present arrangement with DIMTS is expiring on 31.05.2020 and, therefore, it is imperative for the respondents to have the new contractors in place to run the parking lots in question from 01.06.2020.

12. Having heard learned counsels, we are not inclined to grant any relief to the petitioner. Firstly, we may observe that the petitioner has missed the bus and has approached this Court highly belatedly. The last extended date

for submission and uploading of documents and online submission of EMD expired on 27.04.2020. If the petitioner had any grievance, he should have approached this Court earlier to 27.04.2020. The petitioner has allowed the respondent to proceed to take effective steps in respect of the tender process. The technical bids have been opened and evaluated on 28.04.2020.

13. Pertinently, no other contractor faced any such difficulty, as raised by the petitioner. It is pointed out by Mr. Vajani that the petitioner had participated in a similar tender which was opened on 20.02.2020, and the tender conditions of such like tenders are the same. This position is disputed by learned counsel for the petitioner, who submits that the present tender has conditions in addition to the conditions imposed in the earlier tender. However, once again, we are inclined to accept the statement of Mr. Vajani, as it does not stand to reason that the bidders would not be required to submit their preceding financial year statements, including their income tax returns. The income tax returns can be accessed online by the assessee and, therefore, the petitioner may not be fully justified in claiming that it could not procure the said documents, since its Chartered Accountant is not able to function due to the lockdown. The documents regarding turnover for the period upto 31.03.2019 should also be readily available, considering the fact that the income tax return for 2018-19 would have been filed by 30.09.2019, and these statements would have been filed with the tender dated 20.02.2020.

14. Similarly, it is urged by Mr. Kumar that the experience certificate is also not available with the petitioner. Once again, we cannot accept this submission, since the petitioner would have submitted his experience certificate with his earlier tenders, which were floated in the recent past,

including the one floated on 20.02.2020.

15. The submission of learned counsel for the petitioner is that the petitioner should be permitted to participate while taking undertakings from him, also has no merit. The tendering process has to be clear and definite. There is no room for any uncertainty. Only those bidders who are technically qualified, can be permitted to participate in the process of financial bidding. Otherwise, the whole tendering process may fall to the ground, in case, the bidder, who is permitted to participate on the basis of conditionality is subsequently found to be not qualified.

16. In the light of the aforesaid circumstances, we find no merit in this petition and dismiss the same leaving the parties to bear their respective costs.

17. Dismissed.

**VIPIN SANGHI, J**

**RAJNISH BHATNAGAR, J**

**MAY 12, 2020**

*N.Khanna*