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

+ W.P.(C) 4512/2020 and CMs No. 16245-47/2020

SOM PROJECT PVT. LTD. Petitioner
Through Mr. Naveen Sehrawat, Advocate.

versus

UNION OF INDIA & ANR. Respondents
Through: Mr. Vikram Jetly, CGSC for R-1/UOI.
Mr. G.S. Chaturvedi, Advocate for R-2/RITES.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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24.07.2020

HEARD THROUGH VIDEO CONFERENCING

1. The petitioner has filed the present petition being aggrieved by the decision of the respondent No.2/RITES of rejecting its technical bid in terms of the Technical Bid Summary dated 20.7.2020, on the ground that it does not qualify the criteria of "*Similar work*" and is therefore, ineligible for opening of its financial bids.
2. Mr. Sehrawat, learned counsel for the petitioner states that the petitioner duly qualifies as per the eligibility criteria laid by the respondent No.2/RITES for the subject tender dated 5.3.2020, floated for construction of integrated Check Post at Nepalgunj in Nepal. Despite that, its technical bid has been rejected by the respondent No.2/RITES arbitrarily.
3. The aforesaid submission is vehemently disputed by Mr. Chaturvedi, learned counsel for respondent No.2/RITES, who states that a part of the bid

documents includes Annexure-I, which describes in para 2(a), as to what can be treated as “*Similar Works Experience*” for a bidder to qualify. He states that the petitioner herein has listed three works of a minimum value of Rs.56882 lacs in the past five years to claim that it qualifies the eligibility criteria laid down for the works contract in question. However, a glance at the “*Similar works*” referred to in para 2(a)(ii) of Annexure-I would show that in fact, the petitioner does not qualify.

4. For purpose of ready reference, we may extract below the relevant extract of para 2 of Annexure-1 of the Bid documents:-

“WORK EXPERIENCE

a) *Similar Works Experience*

(i) ***For works in Normal Areas (other than Difficult Areas)*** – The Bidder should have satisfactorily completed in his own name or proportionate share as a member of a Joint Venture, at least one similar work of minimum value of **Rs.11364 Lakhs** OR at least two similar works each of minimum value of **Rs.8523 Lakhs** OR at least three similar works each of minimum value of **Rs.5682 Lakhs** during the last 5 (five) years prior to the last stipulated date of submission of the Bid. Works completed prior to the cutoff date shall not be considered.

(ii) ***For Works in Difficult Areas: DELETED***
Similar Works

*Similar Works shall mean the work of:
Construction of Land Port Terminal/ Airport Terminal/ Sea Port Terminal/Integrated Check Post/Hospital Building/Star Hotels/Institutional Buildings/Assembly Building (Auditorium/ Secretariat/Convention Centre etc.) carried out in India/abroad under a single contract (including additional work carried out under the contract).”*

5. The three works that the petitioner has relied on to claim that it is eligible to bid in terms of the tender documents, are detailed in page 12 of the writ petition and are as follows:-

<i>S No.</i>	<i>Name & Type of work</i>	<i>Authority</i>	<i>Date of commencement & completion</i>	<i>Value of work</i>
1.	<i>Construction of Hospital Building for upgradation of Lala Lajpat Rai Memorial Medical College</i>	<i>Executive Engineer PMSSY, Meerut</i>	<i>11/06/2016 & 14/02/2019</i>	<i>59.09 Cr.</i>
2	<i>Construction of Guest House "Madhyalok Bhawan" at Vasi Mumbai</i>	<i>Chief Engineer (Building) MPRDC</i>	<i>23/09//2013 & 31/03/2018</i>	<i>78.77 Cr.</i>
3	<i>Provision of OTM Accommodation & Allied Facility, Missamari, Assam</i>	<i>Project Manager ARMY/MES, ASSAM</i>	<i>25/05/2015 & 08/06/2020</i>	<i>66.24 Cr.</i>

6. There is no dispute about the first project of the petitioner relating to construction of a Medical College at Meerut. The second work relates to construction of a Guest house at Vasi, Mumbai. While learned counsel for the respondent No.2/RITES submits that a Guest house does not qualify as "*Similar works*" stipulated in the tender documents, learned counsel for the petitioner states that the Guest house in question includes an Assembly building and a Conference hall and would qualify as a *similar work*". We are inclined to agree with the said submission. The work described at Sr.No.2 of the tabulated statement would get covered under the description, "*Assembly Building (Auditorium/Secretariat/Convention Centre etc.*" used in para 2(a)(ii) of Annexure-I.

7. Coming to the third type of work referred to at Sr.No.3 above, the same has been described as a provision of Other Than Married

Accommodation ('OTM') and Allied Facilities at Missamari, Assam constructed for Army/MES, Assam.

8. Learned counsel for the petitioner states that the third work also falls under the category of "*Institutional building*" for the reason that not only does the said Complex include OTM's, it also includes administrative offices of the MES.

9. We have pointedly asked learned counsel for the petitioner to clarify the extent of the OTM accommodation, percentage-wise in the said Complex, only to be informed that 80% of the areas in said Complex has been utilised for construction of OTM accommodation. That being the position, we cannot persuade ourselves to agree with the submissions made by learned counsel for the petitioner that the third project qualifies as an "*Institutional building*" for the petitioner to claim that it is a "*Similar work*", referred to in para 2(a)(ii) of Annexure-1 of the tender documents.

10. In view of the aforesaid factual position, the present petition is accordingly dismissed as meritless alongwith the pending applications.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

JULY 24, 2020
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