Uday S. Jagtap

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2552 OF 2021

Sankalp Recreation Pvt. Ltd.
Through its Authorized Officer
Shri. Aakash G. Makwana .. Petitioners

Vs.
Indian Railways Catering and Tourism
Corporation Ltd. & Ors. .. Respondents

.....

Mr. Tajesh Dande a/w Bharat Gadhavi, Vishal Navale, Aniket Aghade i/b Tejesh Dande and Associates for the petitioners
Mr. Amit Sale i/b Consulta Juris for respondent no.1

CORAM : K.K. TATED &
PRITHVIRAJ K. CHAVAN, J.J.

DATED : 8th JULY, 2021
(VIDEO CONFERENCING)

P.C.

1. Heard learned Counsel for the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioners challenges its dis-qualification in the tender process initiated by respondent no.1-IRCTC. The dis-qualification is on the ground that in the packet A – Technical Bid Tender Document, the document mentioned in the list at Annexure-B, Sr. No.12 was not fulfilled namely; balance-sheet and profit and loss account for the Financial Years 2017-18, 2018-19 and 2019-20 were not submitted along with the bid tendered by the present petitioners.

3. The learned Counsel for the petitioners submits that respondent no.1 - IRCTC invited bids for its e-tender for setting up operation and management of food plaza at Kevadiya Railway Station. As per the eligibility criteria for food plaza at Railway Station, a bidder has to place on record the average annual sale turnover for the last three completed financial years from catering business. Clause 12 of the eligibility criteria for food plaza at Railway Station, reads thus :-

<table>
<tr><th>No.</th><th>Mandatory Criteria</th><th>Submitted / not submitted</th></tr>
<tr><td>12)</td><td>Average annual Sales Turn Over in last three completed Financial Years from Catering business in India involving production / sale/service of food items should not be less than the limit indicated below. Trader / stockist / Distributors are not eligible.

<table>
<tr><th>Category of stations</th><th>Average Annual Sales Turnover per annum</th></tr>
<tr><td>B</td><td>50 Lakh</td></tr>
<tr><td>C</td><td>25 Lakh</td></tr>
<tr><td>D, E & F</td><td>15 Lakh</td></tr>
</table>

Please enclose -
(i) Certificate of breakup of sales turnover clearly indicating the sales from Catering business as per "Annexure-B2" for last completed five financial years, duly certified by the Chartered Accountant.

(ii) Also enclose Balance Sheet and Profit & Loss Account of the last three completed financial years duly audited</td><td>2017-18
Rs.________

2018-2019
Rs. _______

2019-2020
Rs._______</td></tr>
</table>

	by the Chartered Accountant. *Note :- Turnover for the year* ***2017-18, 2018-19*** *and* ***2019-20*** *will be considered for calculation of average turnover as desired above.* ***Turnover of 2015-16*** *and* ***2016-17*** *will only be considered to establish that firm is having minimum five years experience in the field of catering / hospitality in India.*	

4. The learned Counsel for the petitioners submits that inadvertently it remained on their part to comply with clause 12 of the eligibility criteria of food plaza at Railway Station. He submits that as per clause 12, the petitioners had to submit last three completed financial years turnover. He submits that instead of that petitioners have placed on record a Certificate dated 23rd January, 2021 issued by their Chartered Accountants – Nahta Jain & Associate. He submits that the said Certificate also shows all the information which was required by the respondent no.1 - IRCTC as per clause 12 of the terms and conditions of the tender notice. He submits that inspite of that, the respondent no.1 – IRCTC by their e-mail dated 24th June, 2021 informed the petitioners that the petitioners' bid has been dis-qualified for the tender invited by the respondent no.1 – IRCTC.

5. The learned Counsel for the petitioners also relies on paragraph 14 of the petition, which reads thus :-

"The petitioner further submits that if

the above referred two certificates could be uploaded by the present petitioner while submitted its bid on 18.03.2021, then in that event there was absolutely no difficulty on the part of present petitioner to upload the required document i.e. Balance Sheet and Profit and Loss Account for the last 3 completed Financial Years duly audited by the Chartered Accountant. However, the said document could not be uploaded only because of the technical and digital difficulty on the part of the petitioner. The petitioner submits that probably it was inadvertence of the present petitioner, because of which the said mandatory document were not submitted / uploaded on 18.03.2021. The petitioner submits that the said inadvertent mistake or the digital technical difficulty was not even noticed by the present petitioner till the disqualification intimation was received by the present petitioner. As such the said default on the part of the present petitioner is absolutely unintentional and caused because of the inadvertence."

6. The learned Counsel for the petitioners submits that he received the information that the petitioners are ready and willing to tender atlest 25% more than that of the highest bidder. He submits that in the interest of justice, this Hon’ble Court be pleased to set aside the order dated 24th January, 2021 issued by respondent no.1 – IRCTC thereby dis-qualifying the petitioners from the said tender process. He submits that in any case, the respondent no.1 – IRCTC is going to be benefited if the said order is set aside.

7. On the other hand, Mr. Sale, learned Counsel for respondent no.1 submits that as per the terms and conditions of the tender notice, the petitioners have failed to comply with clause 12 of the said eligibility criteria. Hence, respondent no.1 – IRCTC informed the petitioners that their bid has been dis-qualified for the tender invited by them. There is no question of considering the Certificate dated 23rd January, 2021 issued by the Chartered Accountant in lieu of documents required as per clause 12. Hence, there is no substance in the present writ petition and the petition is required to be dismissed with costs.

8. In our view, admittedly the petitioners have failed to comply with clause 12 of the terms and conditions of the tender notice. Hence, there is no question of substituting the documents as required under clause 12 by Chartered Accountant’s Certificate dated 23rd January, 2021. Hence, we do not find any substance in the present petition.

9. The petition is dismissed. No order as to costs.

(PRITHVIRAJ K. CHAVAN, J.) **(K.K. TATED, J.)**