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

Judgment reserved on: 26.07.2021

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Judgment delivered on: 10.09.2021

+ **W.P.(C) 5898/2021 and CM APPL. Nos.18587/2021 & 18589/2021**

INDIGRID 1 LIMITED

..... Petitioner

Through: Mr. Amarjit Singh Chandhiok, Senior Advocate with Ms. Poonam Verma, Mr. Saunak Rajguru, Mr. Aparajita Upadhyay and Ms. Priya Aggarwal, Advocates.

versus

PFC CONSULTING LIMITED

..... Respondent

Through: Mr. Tushar Mehta, SGI with Mr. Vijay Kaundal and Mr. Nitish K. Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

JASMEET SINGH, J.

1. The present writ petition has been filed seeking issuance of a writ of Certiorari quashing the impugned decision dated 18.05.2021, wherein the petitioner – along with Sterlite Grid 20 Limited, have been declared “non-qualified” at Request for Qualification (“RfQ”) stage for participating in the next stage of bidding, on the ground of conflict of interest. In addition, the petitioner has also sought an appropriate writ or issue a direction, prohibiting respondent/PFC including its agents or servants from relying

upon or referring to the impugned decision dated 18.05.2021, and also to declare that Petitioner has no conflict of interest with Sterlite Grid 20 Limited, and that 0.3% shareholding of Sterlite Power in the IndiGrid Trust (holding company of IGL1 Ltd) does not in any manner lead to the conclusion of conflict of interest under the terms and conditions of the RfQ.

2. The Petitioner is a company incorporated under the Companies Act, 2013, having its registered office at Unit No. 101, First Floor, Windsor Village, Kolkalyan Off CST Road, Vidyanagri Marg, Santacruz (East) Mumbai, Maharashtra-400098 and is engaged in the business of power transmission in India. The respondent/PFC is a wholly owned subsidiary of Power Finance Corporation Limited (Government of India Undertaking). PFC is incorporated for providing consultancy services to Power Sector and is having its registered office at First Floor, Urja Nidhi 1, Barakhamba Lane, Connaught Place, New Delhi – 110001.

3. PFC has initiated a bidding process for shortlisting of bidders as Transmission Service Provider (“*TSP*”) to establish transmission system for Construction of 400/220/132kV GIS Substation, Mohanlalganj (Lucknow) with associated 400kV lines, and other 765kV & 400kV LILO lines at 765kV GIS Substation Rampur and 400kV LILO (Quad Moose on Monopole) at 400kV GIS Substation Sector 123 Noida through tariff based competitive bidding process.

4. On 14.03.2021, the petitioner IndiGrid 1 Limited (IGL 1) & Techno Electric and Engineering Company Ltd. Consortium (the bidder) submitted its response to the RfQ of which IGL 1 was the lead member. However, on

18.05.2021, the petitioner IGL 1 withdrew their bid from shortlisting as Transmission Service Provider in response to the RfQ with immediate effect. The petitioner further submitted that their submission to the RfQ may not be considered for qualification. The reason for this step was stated to be on account of unprecedented break out of second wave resulting from COVID-19 situation across India, and on account of the same severely impacting the team members of the petitioner.

5. On the same day, the respondent held that the petitioner and Sterlite Grid 20 Ltd. did not qualify for the RfQ stage for participation in the next stage of bidding on account of Conflict of Interest. The operative portion of the impugned communication of 18.05.2021 reads as under:-

“The bids of the following two bidders are not qualified at RfQ stage for participation in next stage of bidding i.e. RfP stage as both bidders having a conflict of interest which puts them in a position to have access to information of the other Bidder and as per clause 2.1.5 of the RfQ, the bids of both bidders are rejected:

- 1. IndiGrid 1 Limited & Techno Electric and Engineering Company Ltd. Consortium*
- 2. Sterlite Grid 20 Limited”*

6. The said impugned rejection has been challenged in the present writ petition.

7. Since the petitioner has already withdrawn their response to the RfQ, the adjudication of the issue: whether the rejection of the bid of the petitioner by the respondent on 18.05.2021 is proper, or not, has become an academic exercise qua the petitioner, which we are not inclined to

undertake. At the same time, we may observe that the writ petition filed by the Sterlite Grid 20 Limited, i.e. W.P.(C.) No. 5768/2021 is being decided by a separate judgment.

8. As for the contention of Ld. Counsel for the Petitioner, that the disqualification in the RfQ in question will negatively impact them, learned Solicitor General has fairly stated that, as and when the petitioner applies in response to a fresh tender/ RfQ, the response of the petitioner will be seen and evaluated on the basis of tender conditions incorporated in the said tender.

9. In this view of the matter, the present writ petition is dismissed.

(JASMEET SINGH)
JUDGE

(VIPIN SANGHI)
JUDGE

SEPTEMBER 10, 2021
‘dm’