

22 29.06.2022

gd/ssd

MAT/897/2022
IA NO: CAN/1/2022
SYLVAN COMMERCIAL PRIVATE
LIMITED AND ANR.
VS
BOARD OF TRUSTEES FOR SYAMA PRASAD
MOOKERJEE PORT, KOLKATA AND ORS.

Mr. Promit Ray,
Mr. Sandip Agarwal,
Ms. Sristi Barman Ray,
Mr. Ratul Das,
Mr. Tanay Agarwal,
Mr. Tirthankar Nandy
..for the Appellants.

Mr. Subhankar Nag,
Mr. Snehashis Sen
..for the Respondent Nos.1 to 3.

This appeal is at the instance of the writ petitioners challenging the order of the learned Single Judge dated 14.06.2022 whereby WPA 9706 of 2022 has been dismissed as the learned Single Judge has declined to admit the petition.

The appellants were one of the bidder in pursuance to the NIT annexure "P-2" floated for the long term lease of vacant land at junction of Diamond Harbour Road and Taratala Road without renewal option against payment on upfront basis. The appellants remained unsuccessful bidders. Hence, they had approached the writ court with the prayer that the auction process held on 23rd May, 2022 be set aside.

The learned Single Judge has considered the plea raised by the appellants and by the detailed order under challenge in this appeal has dismissed the petition on reaching to the conclusion that there was no unfairness or lack of transparency in the manner in which the e-auction was conducted or the H-1 bidder was chosen by the respondent no.4 herein. Learned Single Judge has also noted that the price bid, which was submitted by the appellants, was much lower than the highest bidder and entire process was concluded on 31st May, 2022 with the selection of the highest bidder.

The submission of learned counsel for the appellants is that the learned Single Judge failed to appreciate that only the bidder qualifying Techno Commercial Bid could have participated in the e-auction of price bid and that the price bid was complete on 23rd May, 2022, therefore, there was no question of accepting the hard copy of the price bid submitted by the successful bidder on 31st May, 2022.

As against this, the submission of learned counsel for the respondent nos.1 to 3 is that above submission are factually incorrect and the tender conditions are not under challenge in this appeal and the respondents have acted in accordance with those tender conditions.

Having heard the learned counsel for the parties and on perusal of the records, it is noticed that the

petitioners in the writ petition have not raised any challenge to the tender conditions in the petition. NIT clearly mentions that the e-tender process will be under two parts: Part I - Techno Commercial Bid and Part II – Price Bid. The schedule of tender clearly indicates that the Techno Commercial Bid as also the Price Bid were required to be submitted online in the e-tender system and that the last date of submission of online Techno Commercial Bid and Price Bid was 21st January, 2022 till 5 P.M. The NIT also clearly provides that Part I – Techno Commercial Bid will be opened electronically on specified date and time and thereafter the price bid of the techno commercial qualified bidders shall be opened electronically after the e-auction is completed. There was a provision in NIT for e-auction, which was optional before the opening of the price bid. Undisputedly, the appellants had participated in the e-auction process though it was optional but they were not the highest bidders in the e-auction.

Though an issue was raised before the learned Single Judge that on account of the technical bid the appellants could not submit their bid in the e-auction from 15.21 to 15.49 but the NIT condition 16 in this regard clearly stipulates that neither SMP, Kolkata nor MSTC will be responsible for any problem at the bidder's end like failure of disruption of internet

connection and any trouble with the bidder's PC etc. which may cause inconvenience or prevent the bidder from bidding in any e-tender-cum-e-auction.

Learned counsel for the respondent nos.1 to 3 has also pointed out that on the same date 78 e-auction were held by the respondent no.4 and no complaint of technical glitch was received by the said respondent.

In this background, learned counsel for the appellants has given up the issue of technical breach during the course of arguments.

The NIT clearly provides the evaluation criteria and the step by step procedure which was to be followed. The relevant steps provided Annexure-VII relating to evaluation of criteria in the NIT were as under:

- “4. No hard copy of filled in format of the Price Schedule shall be entertained in case of submission thereof to the office of SMP, Kolkata and/or MSTC.
5. After the closing date of bid submission, e-auction shall take place. Reserve Rent will be the floor price for auction.
6. In case a bidder does not participate in the e-auction, his/her only bid will be that given in the Price Schedule format.
7. Price bids of the techno-commercially qualified bidders shall be opened AFTER the e-auction is over.
8. The bidder having given the highest final bid (after considering price given in the Price Schedule and that, obtained through e-auction) amongst all the bidders, shall be accepted as the successful (H1) bidder.”

The aforesaid conditions make it clear that the highest final bid is accepted after considering the price given in the price schedule and that obtained through e-auction from all the bidders. Undisputedly, in the present case, the price bid submitted by the appellants was only 22.79 crores whereas the highest price bid was given by H1 as 31 crores. Thus, the appellants were neither the highest bidder in the e-auction nor their bid was highest in the price bid.

The submission raised by the learned counsel for the appellants that only the techno commercial bidder can participate in the price bid and, therefore, the highest bidder should not have been permitted to participate is unfounded because there is no material to support the plea that the highest bidder had not submitted the techno commercial bid and the price bid simultaneously as required by the NIT. Such submission is without any merit and cannot be accepted. The submission that the price bid was complete on 23rd May, 2022 can also not be accepted because on that date only the e-auction was completed and thereafter the price bid was considered and the entire process was concluded on 31st May, 2022 by accepting the highest bid.

Having examined the matter from the aforesaid angle, we find that the respondents have acted in

accordance with the conditions of the NIT. Therefore, the learned Single Judge has not committed any error in reaching to the conclusion that the process adopted by the respondents was neither unfair nor lacking in transparency.

In these aforesaid circumstances, we find no illegality or infirmity in the order of the learned Single Judge and also we find no reason to interfere in this appeal which is accordingly dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

