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W.P.No.23275 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.09.2023

PRONOUNCED ON : 17.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.23275 of 2023
and W.M.P.Nos.22812 and 22813 of 2023

1.Tecton Engineering & Construction LLC
P.O. Box 6039, Ajman,
United Arab Emirates

2.Zuberi Engineering Construction Private Limited
H-4/58, Azad Marg,
C-Scheme,
Near Janta Girls School,
Jaipur – 302 001.

... Petitioners

vs.

The Chennai Metropolitan Water Supply & Sewerage Board,
Rep. by its Managing Director,
No. 1, Pumping Station Road,
Chintadripet, Chennai – 600 002

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the Respondent to open PART A of the Technical Bid submitted by the Petitioners in Tender No.CNT/WSS/ICB/JICA/DESAL/GOI/020/2023/24 dated : Nil and consider the Technical Eligibility of the Petitioners as per the bid submitted by the Petitioners.



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For Petitioners : Mr.R.Sankaranarayanan
Senior Advocate
for Mr.R.Presanna Venkat
for APR Associates

For Respondent : Mr.P.S.Raman
Senior Advocate
for Mr.Krishna Ravindran
for CMWSSB

ORDER

The writ petition is filed seeking a direction to respondent to open PART-A of the Technical Bid submitted by the petitioners in Tender No.CNT/WSS/ICB/JICA/DESAL/GOI/020/2023/24 dated : Nil and consider the Technical Eligibility of the petitioners as per the bid submitted by them.

2. The 1st petitioner is a company involved in various Engineering, Procurement and Construction contracts across the world. The 2nd petitioner is an ISO 9001:2015 certified construction company. Both the petitioners formed a venture for the purpose of participating in the tender floated by the respondent for Supply, Erection and Commissioning of Product Water Transmission Mains for 400 MLD Desalination Plant proposed to be constructed at Perur, East Coast Road, South of Chennai. The respondent



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called for tender for above said work on 18.05.2023. The last date for submission of bids was 25.07.2023. As per the tender conditions, the bidders shall submit the bid only through online. The bid is divided into two parts namely (i) technical bid envelope; (ii) price bid envelope. The technical bid envelope further divided into two parts namely PART-A and PART-B. PART-A is Initial Filter Criteria and the bidders are expected to submit the following details in PART-A.

- (a) Bid Security,
- (b) Duly Filled Initial Filter criteria with Undertaking (Annexure I),
- (c) Signed Letter of Technical Bid.

The Part-B consist the following details namely,

- (a) Qualification Criteria,
- (b) Contract Data,
- (c) Any other relevant Documents required as per the Bid Documents.

As per the tender conditions ITB 20.1 read with ITB 21.1, PART-A of the Technical Bid Envelope will be opened first and if the bidder failed to satisfy the initial filter criteria, then PART-B will not be opened. If bidder satisfy all the criterias in PART-A and PART-B, then final price bid will be opened. It is the specific case of the petitioners that they submitted their bid



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within time through online portal as per the tender conditions. However, the respondent refused to open PART-A of the petitioners Technical Bid Envelope and rejected the petitioners bid as if, they failed to satisfy the Initial Filter Criteria and therefore, the petitioners have come up with the above said prayer.

3. Mr.R.Sankaranarayanan, learned Senior Counsel appearing for the petitioners submitted that the refusal of the respondent in opening the PART-A of the Technical Bid Envelope submitted by the petitioners is manifestly arbitrary and unreasonable and hence, the respondent shall be directed to open the PART-A of the Technical Bid Envelope. The learned Senior Counsel further submitted that the petitioners uploaded the scanned copy of bank guarantee certificate for required sum of Rs.9,75,00,000/- issued by HDFC Bank Ltd., dated 20.07.2023 in their Technical Bid Envelope and therefore, the respondent shall be directed to open petitioners' Technical Bid Envelope.

4. Mr.P.S.Raman, learned Senior Counsel appearing for the respondent by relying on the counter affidavit filed by respondent,



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submitted that there are three stages in considering the bids submitted by the participants. According to the learned Senior Counsel, the first stage consist of opening of PART-A of the technical bid, which is otherwise called initial filter criteria. The second stage is opening of the PART-B of the technical bid and the third stage is opening of price bid. The learned Senior Counsel submitted that a bidder must satisfy all the conditions in each of the stages to pass on to the next stage. In other words, the bidder, who failed to satisfy the first stage, is not entitled to seek opening of second stage of the bid. Likewise, a successful bidder in first stage, who fails in second stage, is not entitled to claim opening of final stage namely price bid. The learned Senior Counsel further submitted that in the first stage namely initial filter criteria or PART-A of the technical bid, the bidder is required to submit bank guarantee for bid security amount.

5. In the case on hand, bid security amount for the contract for which the tender was called for is Rs.9,75,00,000/-. However, when PART-A of the petitioners' bid was opened it contained scanned copy of bank guarantee only for a sum of Rs.7,88,00,000/-, which is less than the bank guarantee amount mentioned in the tender conditions. As the petitioners failed to



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upload bank guarantee certificate for required amount, their bid was disqualified from consideration of second stage. The learned Senior Counsel further submitted that the respondent called for tender for Supply, Erection and Commissioning of Product Water Transmission Mains for 400 MLD Desalination Plant at Perur in two packages namely,

(i) PACKAGE CP3-A, from CH:0 TO CH:27100 WITH 5 KM OF DUCTILE IRON K9 BRANCH LINE,

(ii) PACKAGE CP3-B, FROM CH:27100 TO CH:54000.

6. The petitioners submitted bids for both the packages. The petitioners' bid was accepted in respect of the Package CP3-B, however, their bid in respect of the Package CP3-A was rejected on the ground that they uploaded wrong bank guarantee certificate. It is the specific case of the respondent that bank guarantee certificate for other bid namely CP3-B was wrongly uploaded by the petitioners in respect of the present bid in CP3-A. Therefore, only issue to be decided in this case is whether petitioners uploaded correct bank guarantee certificate in PART-A of Technical Bid Envelope submitted by it through online.

7. The learned Senior Counsel appearing for the petitioners by taking



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this Court to the screenshots of the online portal of the respondent found in Page No.1701 and 1702 of the typed set of papers, submitted that the scanned copy of the bank guarantee for Rs.9,75,00,000/- was uploaded as seen from the second entry in the list of uploaded documents. The learned Senior Counsel appearing for the respondent by taking this Court to the first portion of the screenshot found in Page No.1702, which is described as EMD Exemption Details submitted that PART-A of the technical bid is available in EMD Exemption Details and when the certificate uploaded in EMD Exemption Details is opened, bank guarantee certificate for Rs.7,88,00,000/- is only available and the same is relating to other bids submitted by the petitioners for Package CP3-B.

8. On the other hand, the learned Senior Counsel appearing for the petitioners submitted that the correct bank guarantee certificate for Rs.9,75,00,000/- is available in second part of window found in Page No.1702, which is described as uploaded document. However, perusal of the screenshot available in Page No.1702 does not indicate whether PART-A of technical bid is available in EMD Exemption Details or in Uploaded Documents.



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WEB COPY 9. The learned Senior Counsel appearing for the 1st respondent submits that if EMD exemption certificate available in EMD Exemption Details in the first part of screenshot available in Page No.1702 is opened, the petitioners bank guarantee certificate for other bid for a less value of Rs.7,88,00,000/- alone available and the said downloaded certificate is produced in Page No.38 of typed set of papers filed by the respondent. Therefore, it was contended by learned Senior Counsel for respondent that it was obvious the petitioners uploaded wrong certificate in the EMD exemption details instead of uploading bank guarantee certificate for Rs.9,75,00,000/-, which is meant for present bid to which we are concerned with in this writ petition.

10. The learned Senior Counsel appearing for the petitioners submitted that correct bank guarantee certificate for Rs.9,75,00,000/- is available in second part of the screenshot at Page No.1702. The learned Senior Counsel for the petitioner by pointing to the second entry in the uploaded documents, which is described as 'scanned copy of bid security and contractors bid' submitted that in the absence of clear details, which is



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PART-A of the technical bid and which is PART-B of the technical bid, the correct copy of the certificate is uploaded in the second part of the window.

11. A perusal of the screenshot of the respondent's portal available at Page No.1702 make it clear that the window opened in the online portal of the respondent does not indicate, which is PART-A of the technical bid and which is PART-B of the technical bid. In such circumstances, there is every room for a confusion in the mind of the bidder, who is submitting his bid through online portal. It is settled law, in tender cases, fair opportunity shall be given to the bidders. The ambiguity or lack of clarity in the window opened in online portal of respondent for uploading bid documents vitiates fair opportunity. The same will not satisfy the degree of fairness expected in the touch tone of Article 14 of Constitution of India. Therefore, this Court is inclined to accept the submission of the learned Senior Counsel appearing for the petitioners that if petitioners are able to prove correct bank guarantee certificate for the value of Rs.9,75,00,000/- is uploaded in the second entry of the uploaded documents, the petitioners are entitled to a direction as prayed for.



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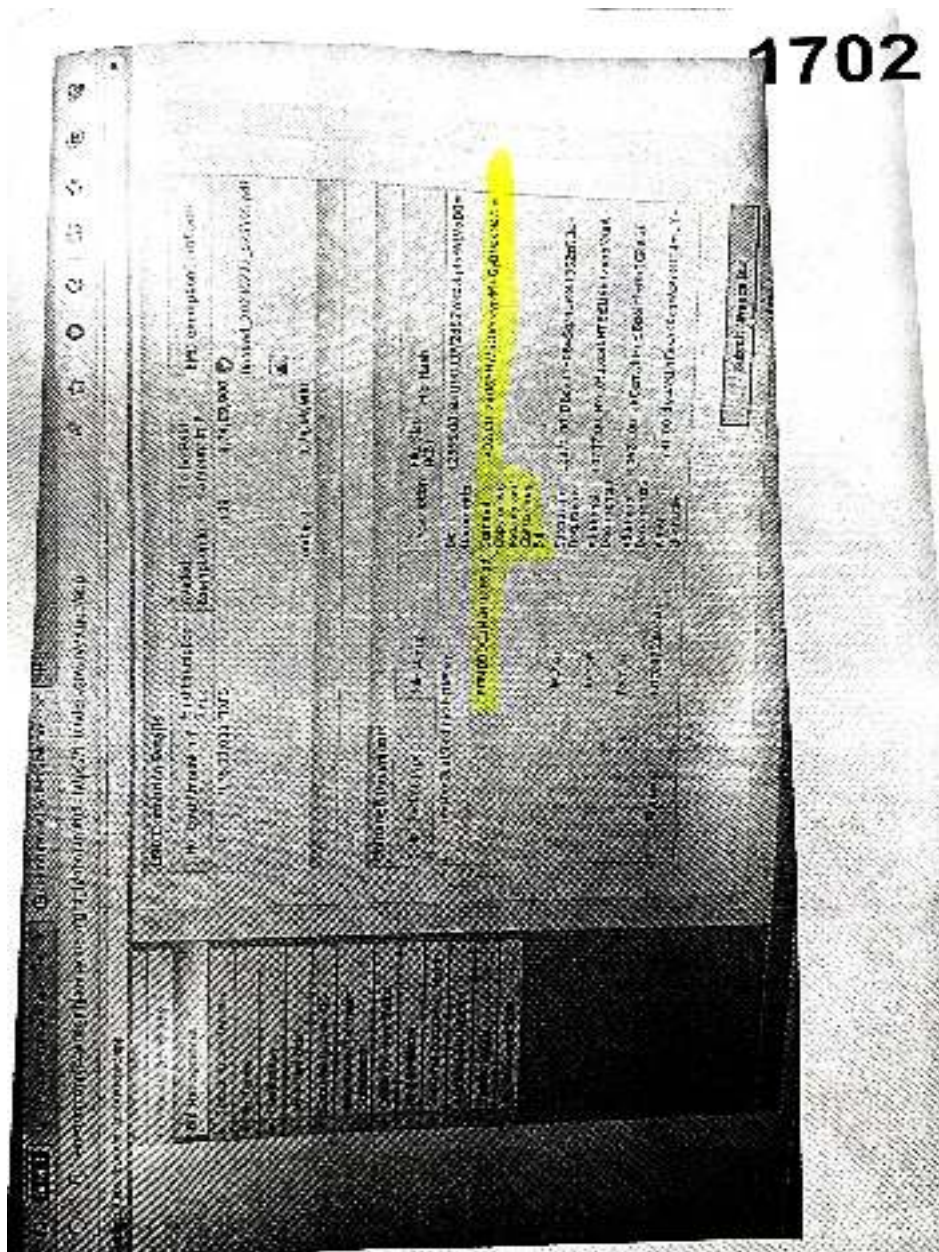
12. In view of the above, this Court is inclined to appoint an Advocate Commissioner in whose presence the Entry No.2 of uploaded documents as shown in screenshot available in Page No.1702 of the petitioners typed set of papers shall be opened by respondent on a mutually agreed date within a period of two weeks from today and if it is found that the petitioner uploaded correct bank guarantee certificate for the value of Rs.9,75,00,000/- in the second entry of the uploaded document, the respondent shall take into consideration the bid of the petitioners for technical evaluation and proceed further.

13. With the above direction, the writ petition is disposed of. Mr.R.Lakshmi Narasimhan, (Enrolment No.1591/04) (Cell No.99625 53813) having office at No.117/118, First Floor, Angappa Naickar Street, Chennai – 600 001, is appointed as Advocate Commissioner, who shall issue notice to the petitioners and respondent fix mutually agreed date for opening of the documents uploaded by the petitioners within a period of two weeks from the date of receipt of copy of this order. The documents shall be opened as directed in the presence of the authorised representatives of the petitioners and respondent. The report of Advocate Commissioner



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containing minutes of his proceedings shall be filed before this Court. The screenshot available in Page No.1702 is reproduced below for the sake of convenience of the Advocate Commissioner:-





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14. The typed version of screen shot is as follows:-

EMD Exemption Details					
S. No	Emd Amount in ₹	Emd Exemption Type	Availed Exemption in ₹	To Be Paid Amount in ₹	EMD Exemption Certificate
1	9,75,00,000	FIXED	100	9,74,99,900	Untitled_20230721_075505.pdf
Total in ₹: 9,74,99,900					

Uploaded Documents					
S. No	Packet Type	File Name	Description	File Size (KB)	File Hash
1	Fee/PreQual/Technical	ONE.rar	Bid Documents	12556.00	8aQBO1JF/2d6ZWsdBq4sENU/oD0=
		BGBIDDOCUM ENTFEES.pdf	Scanned Copy of Bid security and Contractors Bid	432.00	7a06HHWSOVhzvjm+GyBNosNd/1=
		TWO.rar	Supporting Documents	12871.00	Dbv31ePBw5q/40IG413SZzf13=
		Three.rar	Additional Documents 1	10707.00	NydZHuXsBbHT6rEU98izvbbNKaA=
		Four.rar	Additional Documents 2	10624.00	PkCemyhP+cJBpoiYf+Hh0GRsiZE=
2	Finance	BOQ_376097.xls	Bill of Quantities	781.00	DsONAJIYFVsAXXxqWcABHJ14mUY=

The remuneration of Advocate Commissioner is fixed at Rs.30,000/-. The petitioner shall pay the same to the Advocate Commissioner. No costs. Consequently, the connected miscellaneous petitions are closed.

17.10.2023

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm
Note: Issue Order Copy on 18.10.2023.



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To

WEB.COM

The Managing Director,
The Chennai Metropolitan Water Supply & Sewerage Board,
No. 1, Pumping Station Road,
Chintadripet,
Chennai – 600 002

Copy to

Mr.R.Lakshmi Narasimhan,
No.117/118, First Floor,
Angappa Naickar Street,
Chennai – 600 001.



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S.SOUNTHAR, J.

dm

**Pre-delivery order made
in W.P.No.23275 of 2023**

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