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

Reserved on: 13th September, 2023
Pronounced on: 20th September, 2023

\+ **W.P.(C) 12052/2023 & CM APPLs. 47312/2023, 47313/2023**

BIMLA HUMAN RESOURCE LLP ..... Petitioner

Through: Mr. Abhay Kumar, Mr. Shagun Ruhil, Ms. Kusum Pandey and Ms. Anamika Mishra, Advocates.

versus

STATE BANK OF INDIA AND ANR. ..... Respondents

Through: None.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. Petitioner, a start-up enterprise willing to participate in the tender process, finds itself restricted on account of tender conditions framed by the Respondents. Drawing strength from various governmental policies favouring start-ups, the Petitioner has filed the present petition, aiming to annul the tender process.

2. Incorporated in November 2021, the Petitioner is a nascent start-up, having an ISO 90001:2015 certification for offering workforce, facilities management, housekeeping, and security services. Petitioner's grievance pertains to the eligibility criteria entailed in Request for Proposal ["RfP"] dated 24th August, 2023 issued by Respondent No. 1 – State Bank of India

["SBI"] for engagement of caretaker agencies to deploy their services in relation to Automated Teller Machines ["ATMs"] operated by SBI in the State of Delhi. The impugned eligibility conditions provided in Clause 3.1(iii) and Annexure 3 of the RfP read as under:

> *"3. MANDATORY ELIGIBILITY CRETIREA FOR CARETAKER SERVICE PROVIDER*
>
> *3.1 The experience and expertise of the bidder, record of satisfactory Caretaker services and capability for providing the Caretaker services for ATM sites spread over in State of Delhi (Network-1) under New Delhi Circle will be critical factors in selection. The selected bidder should be in a position to meet service level commitments in full. The eligibility criteria will also include the following:*
>
> *xx-xx-xx*
>
> *iii. The Bidder should not be a loss making company and **<u>its Average Annual Turnover as per the Audited Balance sheet for the last 3 years should not be less than Rs.150 Crores per Year.</u>***
>
> [Emphasis Supplied]

" ***Annexure-3***

COMPLIANCE TO ELIGIBILITY CRITERIA
(Please refer to Section 3 of this RFP)

Sr. No.	***Criterion***		***(Yes / No)***	***Remarks***
1	*xx*	*xx*		
…	…	…		
5	*Minimum 05 **years'** experience in the line of activity plus providing Manpower support / Caretaker/ Housekeeping & Maintenance services) satisfactorily to reputed organizations for **<u>last 5</u> continuous years.***	*Mandatory*		
…	…	…		

3. The afore-mentioned specifications require the bidder to: (*a*) have a minimum average annual turnover of Rs. 150 crores in the past three years, and (*b*) a track record of providing same/ similar services for at least five years. The Petitioner contends that these stipulations essentially bar start-ups

from participating in the tendering process as they are not likely to have prior experience or the requisite turnover. They also raised this grievance through an e-mail representation dated 31st August, 2023, however, no response was received.

4. The Petitioner asserts that the SBI has overlooked the Office Memorandum [“OM”] issued on 10th March, 2016 by the Ministry of Micro, Small and Medium Enterprises. This memorandum references a policy circular of the same date, which allows Central Ministries/ Departments/ Central Public Sector Undertakings to ease the requirements concerning prior experience and turnover in public procurement for start-ups and micro and small enterprises [“MSEs”]. This approach was further reinforced through a subsequent OM dated 25th July, 2016 released by the Ministry of Finance’s Department of Expenditure, permitting Central Ministries and Departments to relax the conditions for all start-ups in public procurement. This is however contingent upon these start-ups meeting quality and technical specifications as stipulated in the General Financial Rules, 2005. A subsequent OM, issued on 20th September, 2016 by the Ministry of Finance, emphasized that for all procurement activities, procurement agency is obligated to relax the criteria of prior turnover and experience for start-ups, except for matters pertaining to public safety, health, critical security operations, and related equipment. Highlighting the importance of this mandate, the Petitioner further relies on OM dated 08th November, 2016 of the Ministry of Heavy Industries and Public Enterprises, which specifically addresses the afore-mentioned OMs, and directs the concerned departments to adhere to the guidelines.

5. The Petitioner further argues that the SBI’s tender pertains to supply

of caretaker services, for which no specialized requirements have been outlined in the RfP. Given this context of unskilled workforce, excluding start-ups such as the Petitioner, is entirely arbitrary and stands in clear contradiction and violation of the afore-mentioned OMs.

6. The Court has considered the afore-noted contentions. It is imperative to underscore the specific nature of procurement under the tender in question: caretaker services for SBI's ATM sites within Delhi. The role of the caretaker agency is multifaceted and includes customer assistance, ATM site maintenance, and prompt communication with Branch Manager(s) concerning any anomalies, potential threats, theft, or other emergency situations. It also encompasses the recruitment of caretakers for designated ATM locations and assuring their consistent presence and performance. Keeping in view the fact that the tender pertains to the security and functioning of ATM sites, and the caretakers would be engaged in safeguarding the ATM sites, it is of paramount public interest to ensure that the chosen entity has a proven track record. The requirement of experience is to safeguard the public's trust. Relaxing the criteria might expose the ATM sites to potential risks that can be avoided by relying on entities with the requisite experience in the field. Thus, it is only reasonable for SBI to require that the caretaker agency possesses a certain level of establishment in the market, backed by prior experience and turnover. Such prerequisites are not only reflective of SBI's due diligence, but also its commitment to ensuring the safety and efficacy of its ATM operations. Evaluating the intricacies of this task, this Court finds SBI's insistence on prior experience and turnover as rational and in alignment with the nature of the procurement.

7. The next question warranting our deliberation is the Petitioner's claim

that the OMs previously cited render it obligatory for SBI to ease the disputed conditions, thereby facilitating the participation of start-ups in the tender process. We have meticulously examined the afore-mentioned OMs. Indisputably, there is a manifest intent by the Government to encourage and support start-ups, recognizing the inherent challenges such entities face, particularly their lack of extensive track records, which often precludes them from satisfying qualification metrics related to prior experience and turnover. Acknowledging these challenges, the Government has, over time, enacted executive instructions aimed at granting relaxations to budding enterprises, including start-ups and MSEs. However, a careful reading of these policy decisions and executive instructions reveals that while the Central Ministries and Departments are granted the discretion to ease the criteria relating to prior experience and turnover, they are not unequivocally bound to do so. The autonomy granted to Departments and Central Public Sector Enterprises must be harmonized with the overarching objectives of public procurement, ensuring that standards and requirements are aligned with the greater public good and the core objectives of such procurements. The OMs have been issued with an understanding that every procurement or tender would have unique requirements, and those on the ground – the departments and institutions like SBI – are best equipped to gauge the practicalities involved.

8. After a thorough examination of the facts and circumstances of the case and the contentions presented, we find that our intervention is not warranted. In matters concerning contracts with State instrumentalities, it is well-established that courts ordinarily do not interfere. The authority responsible for issuing the tender is, more often than not, best placed to

determine its prerequisites and requirements. They have the right to delineate certain standards to ensure the competence and capability of the potential contractors. Thus, the Court's role in reviewing tender conditions is typically circumscribed, intervening only when there are manifest signs of arbitrariness, glaring irrationality, or gross perversity. Adhering to these principles, we opine that the impugned tender conditions, which stipulate requirements of prior experience and turnover, are not intrinsically flawed. On the contrary, such conditions may serve the interest of efficacy and reliability, thereby justifying their imposition.

9. For the foregoing reasons, there is no ground or reason to entertain the present petition.

10. Dismissed, along with other pending applications.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

SEPTEMBER 20, 2023

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