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

\+ W.P.(C) 160/2024 & CM APPL. 767/2024, CM APPL. 768/2024

HEMLATA GUPTA

..... Petitioner

Through: Mr. Sanjay Garg, Advocate.

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondent

Through: Mr. Anupam Srivastava, ASC for GNCTD with Ms. Anushka Bhatnagar and Ms. Vaishnavi Gosain, Advocates for R-1
Mr. Anuj Chaturvedi and Ms. Shreya Manjari and Mr. Ajay Gulati, Advocates for DSIIDC along with Mr. Waseem Ahmad, Legal Assistant for DSIIDC

% Date of Decision: 05th February, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

CM APPL. 768/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

W.P.(C) 160/2024 & CM APPL. 767/2024

1. The present writ petition has been filed seeking directions to Respondent No. 2-Delhi State Industrial and Infrastructure Development

Corporation ('DSIIDC'), to issue an allotment letter and handover the vacant possession of industrial plot bearing no. 1356, Sector-H, ad-measuring 368.32 sqm., DSIIDC, Narela, Delhi ('subject plot') to the Petitioner being the successful bidder in the e-auction held on 03rd November, 2023. The Petitioner further seeks quashing of the Notice Inviting Tender ('NIT') dated 24th December, 2023 issued by Respondent No. 2 for re-auctioning the subject plot.

2. Learned counsel for the Petitioner states that the reserve price for the plot was fixed at ₹ 3,40,32,768/-. He states that during the e-auction held on 03rd November, 2023, the Petitioner herein submitted her last bid for ₹ 3,45,82,768/- which is ₹ 5,50,000/- more than the reserve price. He states that despite the Petitioner being the highest bidder, the Respondent No. 2 failed to issue an allotment letter in her favour and instead wrongfully returned the earnest money deposited by the Petitioner. He states that no explanation was offered to the Petitioner for the aforesaid cancellation of the tender process. He states that the Petitioner has now learnt that the subject plot has been re-tendered for e-auction with the same reserve price of ₹ 3,40,32,768/-.

3. In reply, learned standing counsel for Respondent No.2-DSIIDC, states that in order to have fair competition in bidding and with a view to maximise their revenue, the Respondent No.2 had specifically clarified and directed the National Informatics Centre's ('NIC') e-Auction portal to allow bidding in the e-auction only for those plots for which there were at least two (2) bidders. He states that this condition was specifically mentioned by Respondent No.2 in the auction details uploaded on the e-Auction portal. In this regard, he relies upon the instructions uploaded on 2nd November, 2023

and filed along with counter affidavit as Annexure R2. He states that however, contrary to the said instruction of having minimum two bidders, the e-auction went live on 03rd November, 2023, leading to an undesirable situation where the Petitioner herein was the sole bidder.

3.1. He states that thereafter, upon analysis of highest bids received for similarly situated plots in the e-auction held on the same date, the Respondent No.2 assessed that the bid received from the Petitioner was much lower than the highest bids submitted for similarly situated plots. He states that the Respondent No.2 received an average price of ₹ 1,26,789/- per square meter for similarly situated plots, whereas, the Petitioner only offered a bid of ₹ 93,893/- per square meter. He states that therefore, the difference of ₹ 32,896/- per square meter in the bid submitted by Petitioner and received from other bidders for similar situated plots, is substantial and the bid of Petitioner is undervalued and non-competitive qua subject plot.

3.2. He states that therefore, acting in financial interest of the Respondent No. 2, the Competent Authority upon finding that the Petitioner's bid was not competitive, acted in pursuance to its powers reserved under Clause IV (7) (i) & (ii) and Clause VI (3) of the NIT rejecting the bid qua the subject plot. He states that even as per Clause VI (1) of the NIT, the Respondent No.2 has the power to withdraw the subject plot from bidding process at any stage.

3.3. He states that as a matter of fact, the subject plot has been re-auctioned on 2nd February, 2024, through e-auction. Nine bidders participated in the said re-auction and the H-1 bid received by the Respondent No. 2 is for a sum of ₹ 4,70,32,768/- which surpasses the Petitioner's bid by ₹ 1.25 Crores. He states that the Petitioner did not participate in the said e-auction. He states that therefore, the Respondent No. 2 has acted in its best interest and no interference is merited.

4. In response, learned counsel for the Petitioner states that he had no notice of the requirement of minimum two bidders. He states that, in fact, during the period 2019 to 2021, the Respondent No. 2 has allotted plots to single bidders.

5. This Court has considered the submissions of learned counsel for the parties and perused the record.

6. The Petitioner participated in the e-auction on 3rd November, 2023 and since she was a single bidder, her bid was not accepted by Respondent No. 2. Further, the earnest money also stood returned to the Petitioner in the month of December, 2023. The exact date of the return has not been mentioned in the pleadings by either party.

7. The Respondent No. 2 issued a subsequent e-auction notice dated 24th December, 2023, for several plots including the subject plot and it was in these facts, the Petitioner approached this Court on 5th January, 2024, seeking the relief of issuance of allotment letter, handing over of possession and quashing of re-auction notice dated 24th December, 2023.

8. The Respondent No. 2 has placed before this Court the e-auction details uploaded on the e-Auction Portal, which clearly states that Respondent No. 2 had fed information in the Portal that a minimum of two (2) eligible bids are required to start the live auction. The Respondent No. 2 has also placed on record the e-mail exchanged between Respondent No. 2 and the NIC deliberating upon the said condition of auction. Therefore, the condition of minimum two (2) eligible bidders was intended and stipulated by Respondent No. 2.

9. The e-auction was held on 3rd November, 2023 for 125 plots of Respondent No. 2. Several of these plots were located in the same neighbourhood i.e., Narela. The Respondent No. 2 has placed on record an analysis of the bids received for eight (8) plots in Narela to demonstrate that the average price realised in the bid was ₹ 1,26,789/- per sqm. In contrast, the bid of the Petitioner herein is ₹ 93,893/- per sqm. Thus, the bid of the Petitioner was lower by a substantial sum of ₹ 32,896/- per sqm. The said facts of comparison are not disputed by the Petitioner. Further, the subject plot was re-auctioned on 2nd February, 2024 and has secured an H-1 bid of ₹ 4,70,32,768/-, which exceeds the Petitioner's bid by ₹ 1.25 crores. The Petitioner has not disputed the said facts and figures.

10. The Petitioner merely contends that Respondent No. 2 is precluded from not accepting the H-1 bid received on 3rd November, 2023. We are unable to accept the contention of the Petitioner. In view of the express provisions of the NIT i.e., Clause VI (1) and (3) relied upon by Respondent No. 2, it is evident that the said Respondent has reserved unqualified right to cancel the e-auction at any stage if it was the opinion that the H-1 bid is not competitive enough to reflect the market value of the plot being auctioned. The Respondent No. 2 has placed before this Court substantial material to justify its decision in concluding that the bid submitted by the Petitioner was not competitive enough. The Respondent No.2 has also placed on record documents evidencing its clear intent to have minimum two bidders participate in the e-auction.

11. In the aforesaid facts, this Court is of the opinion that the decision of Respondent No.2 to not accept the bid of the Petitioner and cancel the e-auction is neither unreasonable nor irrational; and therefore, no grounds are

made out for granting the reliefs sought in this petition.

12. Accordingly, the present petition along with pending applications stand dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 5, 2024/msh/aa

Click here to check corrigendum, if any