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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3465/2024 & CM APPLs. 14153-14154/2024**
ANIL KUMAR SOLE PROPRIETOR Petitioner
Through: **Ms. Anusuya Salwan and Ms. Sonika Singh, Advocates**
versus
NATIONAL HIGHWAYS LOGISTICS MANAGEMENT LTD Respondent
Through: **Mr. Santosh Kumar and Mr. Kushagra Aman, Advocates for R-1**

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Date of Decision: 06th March, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

CM APPL. 14154/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

W.P.(C) 3465/2024 & CM APPL. 14153/2024

1. Present writ petition has been filed under Article 226 of the Constitution of India seeking directions, to Respondent - National Highways Logistics Management Limited to consider the Petitioner herein, as technically qualified and to open the price bid of the Petitioner, in the tender issued by the Respondent.

2. The Respondent has issued a Notice Inviting Tender ('NIT') for developing, operating and maintaining wayside amenities on Delhi - Amritsar - Katra Expressway in various sections ('project work'). The Petitioner, who is the sole proprietor of A.K. and Company, had participated



in the tender bid process.

2.1. It is stated that as per Clause nos. 6.1 and 10 of the NIT, the parties were called upon to submit their respective proposal and documents on e-tender portal of the Respondent and therefore, the Petitioner submitted the requisite/necessary documents by uploading on e-tender portal of the Respondent the proof of eligibility for the execution of DAK1 i.e., DAK/Delhi-Gurdaspur/Pkg 01/11+600/LHS/HR of the project work.

2.2. It is stated that in compliance with Clause no. 4 of the NIT, the Petitioner submitted a valid bank guarantee ('BG') bearing no. AMCIPBG24024001, dated 24th January, 2024, drawn by AU Small Finance Bank for Rs. 30 Lakhs, along with its bid document.

2.3. It is stated that on 07th February, 2024, the Petitioner received a system generated e-mail from eProcurement system, stating that the Petitioner's bid bearing ID: 642804 was successfully submitted on 07th February, 2024 at 08:43 p.m.

2.4. It is stated that on 29th February, 2024, the Respondent addressed an email to the Petitioner and informed that Petitioner's bid for the aforesaid tender had been rejected during technical evaluation by the duly constituted committee for the reason '*technically non-responsive/disqualified*'.

2.5. Aggrieved by the rejection of its bid for participation in the aforesaid tender, the Petitioner has preferred the present petition.

3. The learned counsel appearing for the Petitioner states that since the Petitioner has submitted all the relevant documents along with BG as per the terms of the NIT, therefore, the Petitioner is technically eligible for the said project work. She states that Petitioner is aggrieved by the decision of the Respondent's committee, wherein the Petitioner's bid to participate in the



tender process was rejected during the technical evaluation round for the reason '*technically non-responsive/ disqualified*'.

3.1. She states that upon an inquiry raised by the Petitioner to Respondent, the Petitioner was informed by Respondent that its bid was rejected on the ground that BG submitted by the Petitioner was also submitted by another bidder, namely, M/s Suman Garg along with its bid.

3.2. She states that the original of the BG is in the custody of the Petitioner and a scanned copy was uploaded for submission with the bid. She fairly states to a query from the Bench that Ms. Suman Garg is known to the Petitioner herein, i.e., Mr. Anil Kumar. She states that a copy of the BG was shared with Ms. Suman Garg as she wanted a sample format for obtaining a BG. She states however, the use of BG by Ms. Suman Garg was not to the knowledge of the Petitioner and, therefore, the Petitioner's bid cannot be rejected.

4. We have considered the submission of the learned counsel for the Petitioner and perused the record.

5. In the admitted facts, both, the Petitioner herein under the name and style of A.K. & Company as well as one M/s Suman Garg, submitted their respective bids to the Respondent. However, both the bidders uploaded copies of the same BG with their respective bids towards bid security. It is undisputed that the submission of security with the bid is an essential term of the tender and if this duplication would have gone undetected by the tendering authority, both the bids would have been considered eligible for participation in the tender process. This would have been an anomaly and in violation of the NIT. The Petitioner and M/s Suman Garg are both known to each other and therefore, the submission of a common BG in two different



tender bids and the consequential rejection by the tendering authority can neither be considered arbitrary nor irrational¹.

6. The submission of a common BG by two separate bidders is contrary to the express terms of the NIT and therefore the decision of the tendering authority to reject both bids does not merit any interference by this Court. The tendering authority, which is evaluating several bids cannot be expected to enter into an enquiry as regards the roles of the Petitioner and M/s Suman Garg in using a common BG for submission.

7. The contention of the Petitioner that though it furnished a copy of its BG to M/s Suman Garg, it did not consent to M/s Suman Garg submitting the said BG along with their tender bid, is a disputed question of fact, which cannot be determined in the present proceedings. Neither the tendering authority can enter into this realm of speculation. We are therefore, of the opinion that in the facts of this case, the Petitioner has been unable to make out any ground for interference by this Court in its jurisdiction under Article 226 of the Constitution of India.

8. Accordingly, the present petition is without any merits and the same along with application is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 6, 2024/hp/MG

Click here to check corrigendum, if any

¹ Tata Motors Limited v. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Others (2023) SCC OnLine SC 671 at Para 48