



\$~62

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

+ **W.P.(C) 4568/2024 & CM APPLs. 18725/2024, 18727/2024**

MERITECH SOFTWARE PVT. LTD.

..... Petitioner

Through: Ms. Malvika Trivedi, Sr. Advocate
with Mr. Nishant Rao, Mr.
Abhimanyu Garg, Ms. Preety Makkar
and Mr. Abhinav Garg, Advocates

versus

BHARAT SANCHAR NIGAM LTD.

..... Respondent

Through: Mr. Dinesh Agnani, Sr. Advocate
with Ms. Leena Tuteja (Through VC)
with Ms. Ishita Kadyan, Advocates
for BSNL

%

Date of Decision: 28th March, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

CM APPL. 18726/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

W.P.(C) 4568/2024 & CM APPLs. 18725/2024, 18727/2024

1. Present writ petition has been filed challenging the letter/communication dated 19th March, 2024 whereby the bid of the Petitioner was disqualified. The petitioner also prays for a direction to the Respondent to consider the bid of the Petitioner as techno-commercially responsive and to open the bid of the Petitioner and consider the same for award of the contract.



2. Learned Senior Counsel for the Petitioner states that the tender dated 17th October, 2023 was floated by the Respondent for supply, installation, testing, commissioning and annual maintenance of RF Tools and Testers. She states that the bid of the Petitioner has been wrongly rejected under Clause 4.1.7 and the Respondent failed to consider that Clause 4.1.7 of the Tender Document is not applicable to the Petitioner. She further states that Clause 4.1.7 is only applicable to *“bidders who shares a land border with India”*, whereas Petitioner is an Indian manufacturer (100% Indian owned company with Indian IPR). According to her, Petitioner is the only OEM of Drive Test Tool/Post Processing Tool as required under Clause 4.1.2 of the Tender Document and does not require any authorization from any vendor as mentioned in the said clause.

3. She submits that the impugned rejection order is a non-speaking communication and does not provide any reason as to how it has deemed the Petitioner as a *“bidder who shares a land border with India”*.

4. She states that the Respondent has wrongly linked Clause 4.1.7 and Query No. 4 to infer that Petitioner is an *“agent”* of Lenovo and OnePlus, since the bid quoted Lenovo-make Servers and Laptop, and OnePlus-make Mobile Handsets.

5. She states that the Petitioner cannot construed to be an agent of Lenovo or OnePlus for various reasons. Firstly, Petitioner had bid for servers and laptops manufactured by Lenovo India Pvt. Ltd. Also, the OnePlus mobile handsets proposed are made in India. Secondly, without prejudice, Petitioner had only bid for procurement of hardware elements from Lenovo and OnePlus, which are not covered in the definition of finished products and only serve as raw materials for tools to be



manufactured by Petitioner. She lastly states that the Petitioner even undertook to offer alternatives like Dell and Samsung without modifying the proposed bid price.

6. Issue notice. Ms. Leena Tuteja, Advocate for BSNL accepts notice.

7. Learned senior counsel for the Respondent states that the decision to disqualify the Petitioner is in consonance with the facts of the case and legally tenable. He, however, candidly admits that the reasoning in the impugned order is cryptic. He states that the Respondent is willing to treat the present writ petition as a representation and decide the same by way of a speaking order.

8. Learned senior counsel for the Petitioner is satisfied with the offer made by the learned senior counsel for the Respondent.

9. Consequently, the present writ petition is disposed of with a direction to the Respondent to treat the present writ petition as a representation and to decide the same by way of a reasoned order in accordance with law within ten days.

10. In the event, the Petitioner is aggrieved by the decision taken by the Respondent, the Petitioner shall be at liberty to file appropriate proceedings in accordance with law. The rights and contentions of the parties are left open.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 28, 2024/rhc