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

\+ W.P.(C) 4592/2024 & CM APPL. 18813/2024

CHANDRA PRAKASH SHARMA ..... Petitioner

Through: Mr. Gaurav Gaur, Mr. Vivek Gaur, Mr. Himanshu Raj and Mr. Rohit Sehgal, Advocates along with Petitioner

versus

NATIONAL HIGHWAYS LOGISTICS MANAGEMENT LTD

..... Respondent

Through: Mr. Santosh Kumar and Mr. Devansh Malhotra, Advocates

% 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. 18814/2024(for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

W.P.(C) 4592/2024

1. Present writ petition has been filed under Article 226 of the Constitution of India seeking quashing of the technical opening report dated 6th March, 2024 ('impugned report') issued by Respondent and a direction to Respondent to consider the bid of the Petitioner for acceptance.

2. The Respondent has issued a Notice Inviting Tender ('NIT') on 27th December, 2023, and a Request for Proposal ('RFP') dated 11th January, 2024, thereby inviting proposals for developing, operating and maintenance of wayside amenities on Delhi-Mumbai Expressway in various sections.

2.1. It is stated that the RFP enables participation and submission of bids by bidders belonging to different categories. The relevant Clause 1.6(a) of the NIT reads as under: -

> "**1.6.** <u>For determining the eligibility of the Bidder the following shall apply</u>:
>
> a) The Bidder may be a single entity or a group of entities (the "Joint Venture"), coming together to implement the Project. The Bidder may be a:
> i. Company registered under the Indian Companies Act, 2013;
> ii. Partnership Firm registered under the Indian Partnership Act, 1932;
> iii. Partnership Firm registered under the Limited Liability Partnership Act, 2008;
> iv. Cooperative Society/Ex-servicemen Society registered under any Cooperative Societies Act (of any state in India) or under Multi State Cooperative Societies Act, 2002 (of any state in India) or under Mutually Aided Cooperative Societies Act (of any state in India);
> v. <u>Proprietary Firm</u>; or
> vi. <u>Individual</u>."

(Emphasis supplied)

2.2. It is stated that the Petitioner submitted his bid on 25th February, 2024 in the name of his sole proprietorship firm 'Shakti Service Station' and duly disclosed that the Petitioner herein is the proprietor of the said firm.

2.3. It is stated that on 6th March, 2024, the Respondent issued the impugned report, whereby the Petitioner's bid was rejected/disqualified as technically non-responsive. In the explanation provided for the said rejection it was stated as under:

> "<u>The bidder has applied as Prop. firm i.e., M/s. Shakti Service Station and claimed the Net worth of individual person.</u>
> <u>Hence, the Net worth of M/s Shakti Service Station is considered which is</u>

<u>less than the eligibility criteria as per **Clause 3.1 Proof of Eligibility**. Therefore, the bidder is considered as **Technically Non-Responsive/ Disqualified**</u>."

(Emphasis supplied)

2.4. The Petitioner made a representation to Respondent on 7th March, 2024, however, the Respondent without considering the said representation proceeded to declare the result of H1 bidders. It is stated that the representation is still pending.

2.5. Aggrieved by the disqualification of its bid, the Petitioner has filed the present petition.

3. Learned counsel for the Petitioner states that the proprietary concern 'Shakti Service Station' and the Petitioner i.e., Mr. Chandra Prakash Sharma are one and same. He states that the proprietorship firm is not a separate juristic entity and therefore, the Petitioner herein had correctly submitted his net worth in the format provided in Annexure-II (B) prescribed for individuals.

3.1. He states that by enlisting proprietary firm and individual separately in the NIT terms at Clause 1.6(a)(v) and (vi), the Respondent cannot confer a juristic status on the proprietorship firm contrary to law. He states that since the Petitioner herein is the proprietor, the net worth of the proprietor and the proprietorship firm is same in law. He states that this absence of distinction between a proprietorship firm and the individual proprietor is well settled. He relies upon the judgment of Supreme Court in ***Ashok Transport Agency v. Awadhesh Kumar and Another***[1] as well as the judgments of High Court of Punjab and Haryana in ***Association of Property***

[1] (1998) 5 SCC 567, paragraph 6

Professionals and Others v. State of Haryana and Others[2] and High Court of Allahabad in ***Manoj Singh v. State of U.P. and Others***[3] to contend that the proprietorship firm has no independent existence separate from the proprietor i.e., the Petitioner herein.

3.2. He states that the financial bid submitted by the Petitioner is higher than the other bidders and disqualification of the Petitioner shall cause loss to the public exchequer. He states that without considering the representation of the Petitioner, the Respondent has arbitrarily proceeded to open the financial bids and caused loss to the public exchequer.

4. In reply, learned counsel for the Respondent states that while there is no quarrel with the legal proposition that the sole proprietorship firm has no separate existence from its proprietor, however, since in the subject tender Clause 1.6(a)(v) and (vi) of the NIT consciously contemplates the said proprietorship firm and the individual as two distinct categories, the Petitioner herein ought to have submitted the net worth in the format prescribed in Annexure-II(A). He states that the Petitioner erred in submitting the net worth as per format provided in Annexure-II(B), which is applicable only to the individual bidder. He states that as a matter of fact, the net worth of a proprietorship firm can be distinct from the proprietor and this distinction is contemplated in the NIT; and the Petitioner having elected to submit a bid in the name of the proprietorship firm is liable to submit the net worth certificate in the prescribed format of Annexure-II(A) only. He states that this distinction between a proprietorship firm and an individual in a tender process has been upheld by the Division Bench of High Court of

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[2] MANU/PH/2943/2022, paragraph 15 and 16

[3] 2019 SCC OnLine All 5502, paragraph 13

Jharkhand in ***Balaji Enterprises Through its Authorized Signatory vs. State of Jharkhand, Through the Secretary, Road Construction Department and Others***[4]**.**

5. We have heard the learned counsel for the parties and perused the record.

6. It is admitted as a matter of fact that the Petitioner has duly submitted a certificate confirming his net worth in the format provided in Annexure-II(B) of the NIT, which declares that the Petitioner has a personal net worth of Rs. 4.72 crores. The sole reason for rejecting the Petitioner's bid and holding it to be technically non-responsive is that the statement of net worth issued by the Chartered Accountant has not been provided in the prescribed format of Annexure-II(A) and instead has been provided in the format of Annexure-II(B).

7. The Respondent has not disputed the legal position that a proprietorship firm is only the business name in which the proprietor carries on business; and the said proprietor is an individual. Thus, there is no dispute in fact and law that the proprietorship firm 'Shakti Service Station' has no legal existence separate from its proprietor i.e., Chandra Prakash Sharma. We are of the considered opinion that the said legal position does not change. When the issue pertains to a NIT process which enables a bidder to participate both as a proprietorship firm or as an individual, the proprietor remains personally liable for discharging the entire liabilities of the proprietorship firm. In this regard, it would be relevant to refer to the judgment of the Division Bench of this Court in ***M/s Associated Jute***

[4] 2019 SCC OnLine Jhar 452, paragraph 23

Industries v. State Farms Corporation of India & Another[5], wherein similarly in a tender process the Court held that it is the net worth of the proprietor, which is to be considered for assessing the net worth of the proprietorship firm. The relevant portion of the said judgment reads as under:

> *"7. The controversy in the present matter is as to whether the petitioner meets the condition of having a net worth of Rs 1 crore. It would be pertinent to note that the expression used in clause X(9) is that the "party concerned" should have a net worth of Rs 1 crore. The "party concerned" in this case was the sole proprietorship concern doing business under the name of Associated Jute Industries. Mr Pramod Agarwal is the sole proprietor of this concern.* ***It is well settled in law that there is no distinction between the proprietorship concern and the proprietor of such a concern. This is so because the proprietorship concern does not have a separate and distinct legal identity as different from that of its proprietor. The proprietorship concern and the proprietor are one and the same in law****.*
>
> *8. Thus, when the expression "party concerned" is used in clause X(9), it refers clearly to the sole proprietor in the case of a proprietorship concern. It would be a different matter in the case of a bidder which is a company registered under the Indian Companies Act, 1956. In that case the company is a separate and distinct legal entity from its share holders. That distinction between a sole proprietorship concern and a company has to be kept in mind while considering this case.*
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> *xxx xxx xxx*
>
> *10. ... Since the net worth of Mr Pramod Agarwal computed at current market prices was Rs 1,50,47,066.37 and that was the net worth which had to be taken into account, we are of the view that the impugned notice dated 26.03.2014, to the extent it disqualifies the petitioner, is liable to be set aside. It is ordered accordingly.*
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> *10. As such, the price bid of the petitioner shall be opened along with the price bids of the other qualified bidders. The writ petition stands allowed to the aforesaid extent. There shall be no order as to costs."*

(Emphasis supplied)

8. In view of the fact that the sole proprietorship firm and the proprietor

[5] 2014:DHC:2634-DB

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Signing Date:30.03.2024 17:14:34

do not have a separate legal existence, the assets and liabilities of the proprietorship firm are of its proprietor i.e., the individual. In the net Chartered Accountant's certificate dated 14th February, 2024 provided by the Petitioner herein, the disclosure of his assets and liabilities including his capital in the proprietorship firm Shakti Service Station has been set out as per the prescribed format of Annexure-II(B). Thus, the purpose of the Respondent to have an assessment and disclosure of the assets and liabilities of the proprietorship firm is duly subserved with this certificate. In fact, the certificate issued by the Chartered Accountant records that it is being issued for Mr. Chandra Prakash Sharma, the proprietor of Shakti Service Station.

9. The Respondent's impugned report states that the Petitioner has been disqualified with reference to Clause 3.1 of the NIT. The Chartered Accountant's certificate dated 14th February, 2024 states that the Petitioner herein has a net worth of Rs. 4.72 crores which is higher than the criteria prescribed at Clause 3.1(b) of the NIT. This conclusion of the Respondent is clearly erroneous, as it is contrary to the certificate issued by the Chartered Accountant.

10. The Respondent's action of not considering the net worth certificate dated 14th February, 2024 and declaring the Petitioner's bid as technically non-responsive, solely for the reason that the certificate of net worth has been issued in format of Annexure-II(B) prescribed for an individual, in the facts of this case, is arbitrary and irrational; as the bidder herein (i.e., Shakti Service Station) though a proprietorship firm is but a trading name of the said individual (i.e., the proprietor - Chandra Prakash Sharma).

11. In view of the findings hereinabove, we hereby quash the impugned technical report dated 06th March, 2024 insofar as it pertains to Shakti

Service Station, the proprietorship firm of the Petitioner herein. The Letter of Award, if any, issued by Respondent in favour of any other bidder is hereby quashed. The Respondent is directed to open the price bid of the Petitioner herein and consider the same along with the price bids of the other qualified bidders; and thereafter, proceed in accordance with law.

12. The writ petition stands allowed to the aforesaid extent and the pending applications stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 28, 2024/msh/MG