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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 7315/2024, CM APPL. 30545/2024 & CM APPL. 30546/2024

AVIAXPERT PVT. LTD. Petitioner
Through: Mr. Amitabh Chaturvedi, Mr. Ankit Monga and Mr. Sumit Kumar Shukla, Advocates
versus

AI AIRPORT SERVICES LTD. & ORS. Respondent
Through: Mr. A.P. Singh, Ms. Akshada Mujwar and Mr. Varnit, Advocates for R-1
Mr. Sameer Vashisht and Ms. Harshita Nathrani, Advocates for R-4

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+ W.P.(C) 7263/2024, CM APPL. 30327/2024 & CM APPL. 30328/2024

AVIAXPERT PVT LTD Petitioner
Through: Mr. Amitabh Chaturvedi, Mr. Ankit Monga and Mr. Sumit Kumar Shukla, Advocates
versus

AI AIRPORT SERVICES LTD & ANR. Respondent
Through: Mr. A.P. Singh, Ms. Akshada Mujwar and Mr. Varnit, Advocates for R-1
Mr. Sameer Vashisht and Ms. Harshita Nathrani, Advocates for R-2

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Date of Decision: 21st May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T(ORAL)



CM APPL. 30546/2024 in W.P.(C) 7315/2024 (for exemption)

CM APPL. 30328/2024 in W.P.(C) 7263/2024 (for exemption)

1. Allowed, subject to all just exceptions.
2. Accordingly, the present application stands disposed of.

W.P.(C) 7315/2024, CM APPL. 30545/2024

W.P.(C) 7263/2024, CM APPL. 30327/2024

3. At the outset, we may note that though both the writ petitions have been filed by the same Petitioner, yet arguments were addressed in W.P.(C) 7315/2024, as it was based on subsequent events and was filed seeking more comprehensive reliefs.
4. The subject matter of the said writ petition is the tender floated by Respondent No. 1, on 09th March, 2024, bearing No. AIASL/CB-11/23-24, for selection of an entity for the purposes of supply of Aircraft Nosegear Towbar Tractor - Narrow Body suitable for Aircraft weight up to 150 Tons ('subject tender').
5. W.P.(C) 7315/2024 has also been filed seeking a direction to Respondent No. 1, to forthwith reject the tender bid of Respondent No. 2, on the allegation that the said bidder is technically disqualified and consequently, cancel the award of tender to Respondent No. 2. The Petitioner further seeks a direction to Respondent No. 1, to award the tender either to Petitioner or in accordance with law.
6. It is stated that Clause 4 of the tender document provides for the pre-qualification criteria, whereby the bidders have to comply with the given terms and submit the requisite documents in order to get their technical evaluation done.
- 6.1. It is stated that Aviaexpert Pvt. Ltd. i.e., the Petitioner herein and



Tugkraft Equipment Pvt. Ltd. i.e., Respondent No. 4, came together as a Consortium, to jointly bid for the subject tender. It is stated that the Petitioner being the lead member of the consortium, submitted its bid on 29th March, 2024, to participate in the subject tender. It is stated that a copy of the Memorandum of Understanding ('MoU') dated 01st January, 2024 evidencing the Consortium was submitted along with the bid.

6.2. It is stated that on 10th May, 2024, the tendering authority informed the Petitioner that as per the documents submitted by the Petitioner, there is no evidence which pertains to the 'legal binding' between the Petitioner and Respondent No. 4. The tendering authority, therefore, requested the Petitioner to submit the requisite document which is legally valid.

6.3. It is stated that the Petitioner in response to Respondent No.1's communication dated 10th May, 2024, re-submitted the MoU dated 01st January, 2024 as evidence of the Consortium Agreement.

6.4. It is stated that on 14th May, 2024, the Petitioner received a notification, wherein it was stated that the Petitioner has been technically disqualified from the subject tender as the documents provided by it were inadequate.

6.5. It is stated that thereafter, on 15th May, 2024, the Petitioner made a representation to Respondent No. 1, thereby asking for the reason for its disqualification from the subject tender. In response, to the said representation, Respondent No. 1, on 16th May, 2024, informed the Petitioner that the Consortium Agreement provided by the Petitioner does not endorse any legal binding as per GOI consortium guidelines.

7. Aggrieved by its aforesaid disqualification dated 14th May, 2024 from the subject tender, the Petitioner preferred W.P.(C) 7263/2024; however, in



the meantime, the Petitioner learned that financial bids have been opened and Respondent No. 2 has been declared as the L1 bidder and awarded the contract. In these circumstances, the Petitioner filed W.P.(C) 7315/2024, to challenge the award of the tender to Respondent No. 2 (L1 bidder) on the ground that Respondent No. 2 is not technically qualified and therefore, Respondent No.2's bid ought to be rejected.

8. Learned counsel for the Petitioner states that there is no format of the Consortium Agreement provided with the tender and therefore, the form of the MoU, submitted by the Petitioner was sufficient and ought not to have been rejected. He states except for citing the reason of the MoU, no other ground for rejection has been communicated. He states that the declaration in the format of Annexure 1 to the tender document was duly submitted by the Petitioner and Respondent No. 4 and therefore, Respondent No. 1 ought not to have entertained any doubts with respect to the binding obligation of the bidder.

8.1. He states that though Respondent No. 1, in its reply dated 15th May, 2024 refers to GOI Consortium Guidelines, the said guidelines are not referred to in the impugned Tender. He states that therefore, the disqualification of the Petitioner and Respondent No. 4 is illegal.

8.2. He states that Petitioner's financial bid qualifies as L2 and if Respondent No. 2 is disqualified, the Petitioner herein will become eligible for the award of tender. He states that in fact Respondent No. 2 is a company incorporated on 05th June, 2023 and it is incomprehensible that the entity could satisfy the conditions set out in Chapter IV of the tender document pertaining to pre-qualification criteria.

9. Learned counsel for Respondent No. 4 states that as the Consortium



partner, Respondent No. 4 supports prayers made by the Petitioner in this petition.

10. In reply, learned counsel for Respondent No. 1 states that a perusal of the MoU filed by the Petitioner and Respondent No. 4 would show that it is bereft of any essential terms and conditions of partnership between the said parties. He states that the MoU is woefully sketchy and vague. He states that Respondent No. 1 as a government entity was unwilling to enter into a contract with Petitioner and Respondent No. 4, since the terms of Consortium were not decipherable to the answering Respondent. He states that the financial stakes in the tender are high and the MoU failed to delineate the allocation of responsibilities assumed by either party in the implementation process.

11. He states that the lack of cohesion between Petitioner and Respondent No. 4 is evident from the fact that even the present two writ petitions have not been filed jointly and Respondent No. 4 has been arrayed as a respondent in these proceedings.

12. He states that since Petitioner is disqualified, he is estopped from challenging the award of the tender in favour of Respondent No. 2.

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

14. The MoU executed between the parties has been placed on record. The operative terms of the said MoU read as under:

“AGREEMENT

1. Both parties Tugkraft Equipment Private Limited & Aviaxpert Private Limited have agreed to jointly participate and also to bid for the purchase enquires/tenders published for below mentioned equipment:

a. Push back Tug/ Aircraft Tow Tractor/ Pushback Tactor/ Airport Tow



- Tractor/Tug*
b. Diesel Baggage Tug
c. Electric Tug
d. Fork Lift

- 2. All bids submitted by Aviaexpert Private Limited as OEM shall be fully accepted to Tugkraft Equipment Private Limited.*
3. Tugkraft Equipment Private Limited as OEM shall be fully responsible to timely supply, maintaining warranty, after sales services, supplies of spares etc. as mentioned on bid documents.

DURATION OF PROTOCOL

*This protocol is signed for duration of **24 months (2 years)** from 01st January 2024 till 31st December 2026. It will cease to continue unless either or both parties agree mutually to end the agreement or renew a new agreement.*

In case the project continues beyond this period then Tugkraft Equipment Private Limited and Aviaexpert Private Limited will mutually decide to continue till the completion of the project.

ARBITRATION

Any dispute that might arise between Tugkraft Equipment Private Limited and Aviaexpert Private Limited must be settled in the first instance by amicable agreement."

15. A perusal of the MoU shows that it does not contain any details with respect to the terms and conditions agreed between Petitioner and Respondent No. 4 with respect to the division of roles, responsibilities and liabilities, which will arise during the course of implementation of the tender between the two entities. The MoU does not contain any essential terms with respect to the agreement between the parties with respect to nomination of a common authority who will execute the tender or the responsibility of the Consortium members with respect to third party liability. The financial terms agreed between Petitioner and Respondent No. 4 for performing the terms of the impugned tender are also not discernible from this MoU. In



fact, since, the MoU predates the impugned tender it does not contain any reference to the same. The reliance placed by the Petitioner on the declaration filed as Annexure 1, to the tender cannot supplant the vagueness in the MoU.

16. In our considered opinion the MoU in its existing form does not evince the intent of the Petitioner and Respondent No. 4, to accept joint liability for performance of the tender document. The non-impleadment of Respondent No. 4 as a co-Petitioner, also substantiates the apprehension of Respondent No. 1, that there is no real partnership between the Petitioner and Respondent No. 4. In these facts, the rejection of the Petitioner's bid by Respondent No. 1 for not qualifying as a Consortium bid does not appear to be arbitrary or irrational. We are unable to find any error in Respondent No. 1's 'unease' in accepting the joint bid of Petitioner and Respondent No. 4, which is based on the vague and sketchy MoU. In fact, the rejection of the bid appears prudent to this Court.

17. Since Petitioner's bid itself is disqualified, it has no locus to challenge the award of tender in favour of Respondent No. 2.

18. We accordingly, find no merit in the present writ petitions and the same are dismissed *in limine* along with applications. It is clarified that we have not examined the validity of the award of tender by Respondent No. 1 in favour of Respondent No. 2.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 21, 2024/hp/MG