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

\+ W.P.(C) 9161/2024 & CM APPL. 37485/2024, CM APPL. 37486/2024

M S ANTARCTICA PROPERTIES COMPANY LIMITED
.....Petitioner

Through: Mr. Vidit Gupta, Adv.

versus

DELHI METRO RAIL CORPORATION LIMITED
.....Respondent

Through: Mr. Ankur Chhibber, Mr. Anshuman Mehrotra, Advs. for R-1.
Mr. Utkarsh Mishra, Legal Assistant DMRC, Mr. Ashish Aman Bhaga, AM/Civil, Mr. Himanshu Shekhar, AM/Contracts DMRC.

% Date of Decision: 10th July, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

1. Present petition has been filed challenging the communication dated 20th May, 2024 whereby Respondent cancelled the tender bearing no. CPD-65Rl for Property Development of 971 sqm available FAR on a plot near NDRS Metro Station of Airport Express Line ("the subject tender").

2. Learned counsel for the Petitioner states that the tender was notified by the Respondent by inviting online bids on or before 26th March, 2024

which date was extended till 10th April, 2024. He states that the Petitioner filed its bid on 9th April, 2024 by fulfilling all the requirements along with deposit of tender fee & tender security.

3. He further states that on 29th April, 2024, the Petitioner was informed that his bid has been admitted by the committee. He states that on 15th May, 2024, Respondent communicated, "You are informed that your bid for the above tender has been accepted during Technical Evaluation by the duly Constituted Committee and the financial bid opening of the tender has been fixed on May 15, 2024 at 4:35 PM". He states that the Respondent cancelled the subject tender on 20th May, 2024.

4. He submits that the Respondent does not have unfettered discretion to cancel the tender without any reason or reasonable excuse. He contends that the mala fide of the respondent is evident from the comparative table given at page No.13 of the paper book wherein the case of tender of adjoining built up area has been accepted, but the petitioner's tender has been cancelled without any reason. He points out that from the petitioner's bid, the respondent would have realized higher revenue than the tender given qua the adjoining building.

5. *Per contra*, learned counsel for the DMRC, who appears on advance notice, has handed over a photocopy of the Tender-Committee Minutes held on 17th May, 2024 for evaluation of technical offers of the Contract CPD-65R1: Property Development on a land near New Delhi Metro Station of Airport Express Line. The relevant portion of the said minutes are reproduced hereinbelow:-

*"**6. DISCUSSIONS ON THE HIGHEST OFFER***
The offer received from sole technically compliant bidder i.e. M/s Antarctica Properties Company Limited (1/2) is compared with the Reserve Price and NPV as below:

Particulars	*Reserve Price (Rs/sqm/month)*	*NPV-DMRC (INR Crore)*
As per DMRC's Reserve Price	*1187.80*	*39.56*
As per offer submitted by H1 Bidder	*255*	*8.65*
%age above/below	*78.53% below*	*78.14% below*

The Tender Committee has noted that the highest offer received from technically compliant bidder i.e. M/s Antarctica Properties Company Limited (1/2) with lease fee rate of INR 255/- per sqm per month is 78.53% lower than the Reserve Price of INR 1187.80/- per sqm per month by DMRC (CP-1984). The NPV to be realized by DMRC works out to INR 8.65 Crores which is 78.14% lower than the NPV of INR 39.56 Crores, which has been found to be on the lower side & hence not acceptable to DMRC (CP-1985).

7. RECOMMENDATION
In view of above discussions, the Tender Committee considers the offer of M/s Antarctica Properties Company Limited (1/2) at monthly lease fee rate of INR 255 (Rupees Two Hundred Fifty-Five only) per square meter, on lower side and recommends to discharge the present call of tender.
Acceptance, rejection or modification of the recommendations of the Tender Committee is within the power of D(O&S) in terms of SOP Clause PD2 (2.3)."

6. He states that in view of the aforesaid, the Tender Committee considered the offer of the petitioner at monthly lease rate of Rs.255 per square meter on the lower side and recommended to discharge the present call of tender which was accepted by the higher authorities.

7. Having heard learned counsel for the parties, this Court finds that the tender in question empowers the respondent DMRC to reject any bid without assigning any reason whatsoever. The relevant clauses in the tender document are reproduced hereinbelow:

> *"....3.20.10 However, the confirmation of the highest Bid shall be at the sole discretion of the DMRC who does not bind itself to confirm to the highest Bid and reserves the right to reject the Bid without assigning any reasons whatsoever.*
>
> *xxx xxx xxx*
>
> *3.21.3 The Bidder hereby voluntarily and unequivocally agrees that DMRC shall not be under any obligation or be liable for any acceptance, rejection or annulment of any/all Bids and the Bidder shall not to seek any claims, damages, compensation or any other consideration whatsoever on this account, from DMRC....."*

8. However, it is settled law that any arbitrary exercise of power to reject bids is violative of Article 14 [See: ***Mihan India Limited v. GMR Airports Limited & Ors***, ***(2022) SCC Online SC 574***].

9. In the present case, this Court finds that the Tender Committee has declined to accept the petitioner's bid for legal, valid and cogent reasons. From the minutes of meeting of the Tender Committee held on 17th May, 2024, it is apparent that the petitioner's bid was found to be 78.53% below the bid which the DMRC expected to receive and 78.14% below the Net Present Value.

10. This Court also finds that the present case is a case of sole technical compliant bidder. Consequently, this Court is of the opinion that there was no healthy competition in the present tender. Accordingly, the present petition is dismissed.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

JULY 10, 2024
N.Khanna