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

+ W.P.(C) 10741/2024

SANJAY AGARWAL

.....Petitioner

Through: Mr. Bhupesh Narula, Ms. Rinku
Narula and Mr. Anugrah Ekka,
Advocates

versus

NBCC

.....Respondent

Through: None

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

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05.08.2024

1. Present writ petition has been filed challenging the decision dated 2nd August 2024, whereby the petitioner was disqualified in the technical bid of the tender issued by the respondent/NBCC for operation and maintenance of *Bharat Mandapam* at Pragati Maidan, New Delhi.
2. Learned counsel for the petitioner states that the technical bids were opened on 27th July 2024 and the petitioner was held to be one of the two qualified bidders. He states that on 2nd August 2024, the petitioner was declared disqualified on the ground that the petitioner did not submit Form-C and bank guarantee (BG) as per the format provided by the respondent. He states that the documents filed by the petitioner meet all the mandatory requirement of the tender notice. He further states that there is no



requirement related to Form-C and Bank Guarantee, which has not been fulfilled by the petitioner.

3. He contends that the purpose of the format prescribed by the Tendering Authority is to ensure that all details are supplied by the bidders. He further contends that the respondent cannot disqualify any bidder only because the banker issuing the Bank Guarantee has deleted some Clauses because of its policy. He states that no reason has been provided by the respondent for initially declaring the petitioner to be qualified but subsequently holding him to be disqualified.

4. During the course of hearing, learned counsel for the petitioner has handed over the GCC Contract as well the Form of a Bank Guarantee for Earnest Money deposit and the Bank Guarantee for Earnest Money actually furnished by the petitioner.

5. Admittedly, the last paragraph in the proforma of Bank Guarantee in Lieu of EMD (Tender Bond) is not to be found in the actual Bank Guarantee for Earnest Money furnished by the petitioner. The last paragraph, which is prescribed in the proforma, does not find mention in the Bank Guarantee for Earnest Money furnished by the petitioner. The said paragraph which has been deleted is reproduced hereunder:-

“We, the Bank, lastly undertake not to revoke this guarantee during its currency without the prior consent of NBCC in writing and this guarantee shall remain valid upto upon expiry of which, we shall be relieved of our liability under this guarantee thereafter.”

6. In the opinion of this Court, the obligation of the bank that it would not revoke the Bank Guarantee till a particular date is a relevant, material and essential term. It is not a minor or technical irregularity of little or no significance which can be waived.



7. Accordingly, the present writ petition, being bereft of any merit, is dismissed.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

AUGUST 5, 2024

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