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

\+ W.P.(C) 16755/2023, CM APPL. 67486-67487/2023 & CM APPL. 7329/2024

CISB SERVICES PVT LTD ..... Petitioner

Through: Mr. Ashish Mohan and Mr. Arush Bhandari, Mr. Santosh Kushwaha, Advocates

versus

UNION OF INDIA & ORS. ..... Respondent

Through: Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Advocate for R-1/UOI
Ms. Shweta Bharti, Ms. Ankita and Mr. Kushagra Verma, Advocates for R-2.
Mr. Rajiv Kapur, Mr. Akshit Kapur, Mr. Aditya Saxena, Advocates for R-3/SBI with Mr. Suram Chand, AGM, ATM Deptt, SBI.
Mr. Rajesh Yadav, Senior Advocate with Mr. Amit Choudhary, Advocate for R-4

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\+ W.P.(C) 16756/2023, CM APPL. 67488-67489/2023 & CM APPL. 7261/2024

CISB SERVICES PVT LTD ..... Petitioner

Through: Mr. Ashish Mohan and Mr. Arush Bhandari, Mr. Santosh Kushwaha, Advocates

versus

UNION OF INDIA & ORS. ..... Respondent

Through: Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Advocate for R-1/UOI
Ms. Shweta Bharti, Ms. Ankita and Mr. Kushagra Verma, Advocates for R-2.
Mr. Rajiv Kapur, Mr. Akshit Kapur, Mr. Aditya Saxena, Advocates for R-3/SBI with Mr. Suram Chand, AGM, ATM Deptt, SBI.
Mr. Rajesh Yadav, Senior Advocate with Mr. Amit Choudhary, Advocate for R-4

% Date of Decision: 12th February, 2024.

HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. The subject matter of the present writ petitions is E-tender bearing no. GEM/2023/B/3871653 dated 24th August, 2023 and E-tender bearing no. GEM/2023/B/3949428 dated 12th September, 2023 respectively.

2. The aforesaid tenders have been issued by Respondent No. 1 for services to be utilized by Respondent No. 3. The said tendering process has been conducted through the Government e-market place i.e., Respondent No. 2, platform.

3. It is a matter of record that on 19th December, 2023 technical bid of the tenders was opened and four (4) bidders including Petitioner and Respondent No. 4 were technically qualified. Further, on 20th December,

2023, when the price bid was opened all the four (4) qualified bidders were declared as L1.

4. The present writ petitions were filed as the Petitioner was aggrieved of the Respondent Nos. 1 and 3's action of considering Respondent No. 4 as a Micro and Small Enterprise ('MSE') and choosing to award the tenders in entirety to Respondent No. 4 on this assumption. The Petitioner contends that firstly, Respondent No. 4 is not an MSE as it has a turnover of more than Rs. 210 crores; and secondly, contends that since the eligibility criteria mandatorily required the annual turn-over of the bidder to be at Rs. 150 crores and Rs. 90 crores respectively in both the tenders, an MSE even otherwise could not have been eligible to submit a bid in these tenders.

5. Learned senior counsel for Respondent No. 4 fairly states that the contention of the Petitioner to the effect that Respondent No. 4 is not an MSE, is correct. He states that Respondent No. 4 is a recognized medium enterprise. He states that Respondent No. 4 has duly disclosed this fact while uploading its documents.

6. Learned counsel for Respondent No. 3 states that an error crept in during the uploading of the submission process on the GEM portal, as Respondent No. 3 by mistake selected 'MSE Purchased Preference' in an affirmative. He states that Respondent No. 3 should have selected 'No' on the GEM portal as a MSE is not eligible for participating in these tenders. He states that it has taken six (6) months for this tender process to be completed and therefore, Respondent No. 3 wrote an email on 03rd January, 2024 to Respondent No. 2 acknowledging the said mistake and requesting them to restart the present tenders, from the stage of, the financial bidding process among the selected four (4) qualified technical bidders. He states

that since all the four (4) qualified technical bidders are L1 bidders, the work can be equally divided amongst all the four (4) bidders.

7. Learned counsel for Respondent No. 2 states that on the GEM portal, there is no human intervention and Respondent No. 2 would be unable to process the request of Respondent No. 3. She states that the entire process of bidding would have to be re-started.

8. Learned counsels for Petitioner and Respondent Nos. 1 and 4 have no objection to the submission of Respondent No. 3 that the tender work can be divided equally amongst all the four (4) technically qualified bidders as they are all L1.

9. The list of the four (4) technically qualified bidders which includes the Petitioner and Respondent No. 4 has been filed as Annexure P-5. The said bidders have also emerged as the L1 bidders. Respondent Nos. 1 to 3 admit that each of the four (4) bidders is eligible for being awarded the tenders. However, Respondent No. 2 has expressed its inability to award the tender to the eligible bidders through its e-platform due to the initial wrong selection of 'MSE Purchase Preference' by Respondent No. 3. Respondent No. 2 has expressed its inability to process the request of Respondent No. 3 to proceed with the award of contract to the eligible bidders due to the inbuilt restrictions in the program used for operating the e-platform. Respondent No. 2 contends that it cannot modify the tender terms to correct the said mistake and states that the entire process would have to be re-initiated.

10. Keeping in view the fact that it took six (6) months for the present bidding process to come to a completion and Respondent Nos. 1 and 3 are duly satisfied with the eligibility of the four (4) successful bidders, we are of

the considered opinion that it would be in the public interest to direct Respondent Nos. 1 and 3 to award the tenders in equal shares to all the four (4) eligible bidders.

11. With the aforesaid directions, the present writ petitions are allowed. Pending applications stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 12, 2024/hp/ms

Click here to check corrigendum, if any