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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 12331/2024, CM APPL. 51321/2024 & CM APPL. 51322/2024**

KORE SECURITY SERVICES

.....Petitioner

Through: Mr. Ravindra Raizada, Senior Advocate with Mr. Vinay Bhasin, Mr. Himanshu Sapra, Ms. Kamalpreet Kaur, Advocates.

versus

DELHI STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED AND ORS

.....Respondents

Through: Ms. Anusuya Salwan, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
04.09.2024

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1. The Petitioner participated in a Notice Inviting Tender¹ issued by Respondent No. 2 – Office of Executive Engineer (CD-01), on behalf of Respondent No. 1 – Delhi State Industrial & Infrastructure Development Corporation Limited² for providing security services in housing complexes constructed by them. The Petitioner submitted their financial bid for the NIT on 4th July, 2024 and was deemed to be an L-1 bidder by the competent authority of Respondent No. 2.

2. In this regard, Respondent No. 2 issued certain communications to the

¹ “NIT”



Petitioner seeking clarification regarding complaints received by them in terms of the wages paid by them to the security personnel. Even though the Petitioner duly furnished their replies to the aforementioned communication, the response was not found satisfactory and as a result, by way of order dated 23rd July, 2024³, Respondent No. 2 invoked Clause 17.3 of the NIT and forfeited 50% of the Earnest Money Deposit⁴ amounting to INR 6,57,755/-. Further, the Petitioner was also debarred from re-tendering with DSIIDC for two years. The relevant portion of the impugned order is as follows:

Name of work: - Action as per NIT's term and conditions under clause 17.3 i.e. forfeiture 50% EMD and debarring for 2 years.

Tender ID:- 2024_DSIIDC_257527_1

Sir,

This is in reference to participation in bid of aforesaid work & tender ID wherein you had quoted the lowest rate i.e. Rs. 5,29,54,565/- against estimated cost Rs. 6,57,75,380/-. Seeing rate quoted abnormally low, you were asked to provide breakup of wages along with other clarifications vide this office letter dated 05.07.2024, but you did not submit any documents in response to the same.

Subsequent to the receipt of certain complaints in this office, further clarifications were sought regarding previous correspondence, to which no reply was received and documents in support to the allegation raised in the complaints via email dated 09.07.2024. In response to email dated 09.07.2024 you had submitted reply in the division office on 15.07.2024 which was incomplete. Thus, you were given last opportunity vide e-mail dated 16.07.2024 to submit the requisite information by 17.07.2024.

The reply sent through e-mail dated 17.07.2024 was examined and found unsatisfactory as you had stated to make the payment as per unskilled and semi-skilled for security guard and Gunman respectively which is in violation to tender special conditions under clause 6(3), 54 of NIT and minimum criteria laid down by Ministry of Labor and Employment, GOI.

After considering your replies it is concluded that you have not complied with NIT's terms and conditions under clause 17.3 which states "if any discrepancy or any short coming is found at later state or L-1 agency does not turn up for verification of originals which renders tender of L-1 agency as invalid, the 50% of EMD amount shall be forfeited and the tenderer shall be debarred for re-tendering for period of 2 years in DSIIDC".

It is therefore, the competent authority has rejected the aforesaid tender along with implementation of NIT's term and conditions clause 17.3. Accordingly 50% EMD i.e. Rs. 6,57,755/- has been forfeited and your firm has been debarred for tendering in DSIIDC for two years from the date of issue of this letter.

Yours faithfully

3. Mr. Ravindra Raizada, counsel for the Petitioner impugns the aforenoted order, arguing that the debarring action as well as forfeiture of the EMD was not preceeded by any show cause notice and therefore such an

² "DSIIDC"

³ "Impugned order"



action is wholly erroneous and arbitrary and in violation of the principles of natural justice. In this regard, the reliance is placed on the judgment of the Hon'ble Supreme Court in *Gorkha Security Services vs Govt. of NCT of Delhi & Ors.*⁵

4. Mr. Raizada also urges that there was no violation of any clause of the tender by the Petitioner since the NIT does not specify anything about the skill category of the security guards and the rates which were quoted by the Petitioner were in line with the salaries given by other Government Departments to their security personnel. In this regard, the Court's attention is drawn to the Petitioner's reply dated 17th July, 2024, whereby the Petitioner clarified that they had quoted rates for security guard under unskilled category and quoted rates for gunman under the semi-skilled category. Furthermore, it was mentioned that to comply with the requirements of Respondent No. 2, Petitioner will deploy the unskilled guards and train them as semi-skilled and will deploy semi-skilled gunman and train them to match the performance of the skilled gunman. In the aforementioned reply of the Petitioner, they also highlight that the NIT does not make mention about the skilled category of security guards and therefore, there is no violation of any clause or the tender.

5. On the other hand, Ms. Anusuya Salwan, counsel for the Respondents, states that the impugned order does not suffer from any infirmity. However, she submits that since there was no prior show cause notice given to the Petitioner specifically proposing the action of debarment, the Respondents are willing to reconsider this issue and accordingly issue a

⁴ "EMD"

⁵ (2014) 9 SCC 105



show cause notice, if required. Nonetheless, she urges that notwithstanding the action of debarment, the forfeiture of the EMD being in consonance with the contractual terms of the NIT is a valid action.

6. The Court has considered the aforementioned contentions. It is noted that the forfeiture of 50% of the EMD amounting to INR 6,57,755/-, is drawn from Clause 17.3 of the NIT which reads as under:

“17.3 If any discrepancy or any short coming is found at later state or L-I agency does not turn up for verification of originals which renders tender of L-I Agency as invalid, the 50% of EMD amount shall be forfeited and the tenderer shall be debarred for re tendering for period of 2 years in DSIIDC.”

7. As to the question of the payment of unskilled and semi-skilled security guards and gunman was in violation of the NIT special conditions under Clause 6 (ii), 54 as well as the minimum criteria laid down by the Ministry of Labour and Employment, Government of India, is purely a contractual dispute which would require interpretation for the terms of the contract. To this extent, in the opinion of the Court, a writ petition preferred under Article 226 of the Constitution of India, is not the appropriate remedy for redressing such a grievance, involving disputed questions of fact. Accordingly, this Court declines to interfere with respect to forfeiture of the 50% of the EMD.

8. However, the imposition of penalty debarring the Petitioner from tendering with the DSIIDC for a period of two years, in the opinion of the Court, can not be sustained in the absence of any prior show cause notice. Thus, such an action of debarment amounts to violation of the principles of natural justice. Accordingly, the direction for debarring the Petitioner from tendering in a DSIIDC contract for two years, is accordingly set aside.



9. The Respondents are at liberty to issue a fresh show cause notice to the Petitioner, if so required, specifying the proposed action to be taken, to enable the Petitioner to submit their response thereto.

10. It is clarified that if an action is initiated by the Respondent in this regard, they shall duly consider the Petitioner's stand and take an appropriate decision thereon, in accordance with law. On this aspect, it is further clarified that the Court has not examined the merits of the allegations made by the Petitioner and all rights and contentions of the parties are left open.

11. With the above directions, the present writ petition is disposed of along with pending applications.

SANJEEV NARULA, J

SEPTEMBER 4, 2024/ab