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

+ **W.P.(C) 14443/2024**

LESS CARBON TECHNOLOGIES PRIVATE LIMITED & ANR.

.....Petitioner

Through: Mr. Ashim Sood, Mr. Siddharth Nath,
Mr. Hussain, Mr. Anunay Chowdhary
and Mr. Ankur Singhal, Advs.

versus

GOVERNMENT E-MARKETPLACE SPV & ORS.

.....Respondent

Through: Ms. Shweta Bharti, Ms. Yashodhara
Burmon Roy, Mr. Siddharth Sharma
and Mr. Pranshu Singh, Advocates for
R-1/GeM.
Mr. O.P. Gaggar, Adv. for R-2.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

23.12.2024

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1. The petitioner has filed the present petition, *inter alia*, praying as under:

“a. Issue a writ of mandamus and / or any other writ and / or direction (s) of a similar nature directing Respondent No. 1 and Respondent No. 2 to permit the participation of Petitioner No. 1 in the Reverse Auction process considering their Indicative Commercial Bid to be INR 7,22,16,000 (Rupees Seven Crores, Twenty-Two Lakhs & Sixteen Thousand);

b. Issue a writ of certiorari and / or any other writ and / or direction (s) of a similar nature setting aside the price justification request



dated 29th August, 2024;

c. Direct Respondent No.1 to provide for a dialogue box for 'amount in words' as well as numbers in the format '00,00,000' in all tenders and bid pages henceforth;

d. Direct Respondent No.1 to provide for a 'Bid Confirmation / Review Page' in all tenders and bid pages henceforth; ”

2. It is the petitioner's case that it had participated in the bidding process pursuant to the tender floated on 30.03.2024 (GEM/2024/B/4819850). Pursuant to the said notice, bidders were invited to submit their proposals for 'End-to-End Software Solution for Climate Risk Management and its Implementation' by Respondent No.2/ Union Bank of India (hereafter *UBI*). The said notice was floated on Government E-Marketplace (hereafter *GeM Portal*) operated by respondent No.1.

3. It is the petitioner's case that it had submitted a proposal and a bid of an amount of ₹7,22,16,000/- as its commercial bid. However, there was a technical error on the GeM portal and its bid was recorded as ₹2/-. It is also contended by the petitioner that the bid submitted was not the final bid and was only an indicative price for participating in the Reverse Auction that would be conducted amongst technically responsive bidders.

4. We consider it relevant to set out the averments made by the petitioner in regard to the submission of its bid on the GeM Portal and the same is set out as under:

“13. Petitioner No. 1 undertook internal discussions regarding the amount to be bid as the indicative commercial offer, and eventually arrived at INR 7,22,16,000 (Rupees Seven Crores, Twenty-Two Lakhs & Sixteen Thousand) as the appropriate indicative bid amount. An exhaustive price break-up of the indicative commercial bid was also prepared by Petitioner No. 1. As can be seen from the said price break-up, the total amount that the Petitioners intended to enter as the indicative commercial bid was INR 7,22,16,000 (Rupees Seven Crores, Twenty- Two Lakhs & Sixteen Thousand).



True copy of the internal communications dated 10th June, 2024 exchanged between the employees of Petitioner No. 1 indicating the intention to bid INR 7,22,16,000 (Rupees Seven crores, twenty-two lakhs & Sixteen thousands) has been annexed herewith as Annexure P- 6.

True copy of the price break-up prepared by Petitioner No. 1 has been annexed herewith as Annexure P-7.

14. Even at the time of registration, Petitioner No.1 faced technical issues to the extent that the date of submission of the RFP had to be delayed due to GeM Portal's inability to communicate with the Ministry of Corporate Affairs to confirm company details.

15. Petitioner No. 1 submitted its bid online on the GeM Portal on 11th June, 2024 in consonance with the relevant clauses of the RFP. The task of entering the bid was entrusted to Ms. Shreyashi Basu Roy and Ms. Anisha Maini. Verbatim, the amount was entered as '72216000'. It is submitted that even when the above persons were preparing the bid documents to be submitted, the GeM Portal was experiencing technical glitches. Such errors prevented Ms. Anisha Maini from logging in with her GeM Portal account. Due to multiple failed login attempts, Ms. Anisha Maini shared her account credentials with Ms. Shreyashi Basu Roy who entered an amount (in figures) of INR 7,22,16,000 (Rupees Seven Crores, Twenty-Two Lakhs & Sixteen Thousand) as the indicative commercial bid on the GeM Portal. Ms. Shreyashi Basu Roy was sharing her screen with Ms. Anisha Maini at the time of preparation of bid documents as well as the submission of the bid documents along with the indicative commercial bid and could therefore see the amount being entered. This is in keeping with Petitioner No.1's policy of having two persons accountable to eliminate errors and it is on this basis that the above two persons have filed affidavits attesting to the amount entered by them.

A true copy of the bid acknowledgement receipt dated 11th June, 2024 has been annexed herewith as Annexure P-8. Affidavit of Ms. Shreyashi Basu Roy is annexed herewith as Annexure P- 9.

Affidavit of Ms. Anisha Maini in annexed herewith as Annexure P-10. ”

5. Respondent No.1/Government E-Marketplace SPV has filed its counter affidavit affirming that the petitioner's commercial bid was encrypted and it forwarded to UBI.



6. The said bid was, thereafter, de-encrypted by the de-encryption key and it was revealed that the petitioner's commercial bid was ₹2/-.

7. The learned counsel for UBI states that the said bid of ₹2/- was considered as non-responsive.

8. The present petition was listed on 19.12.2024 and this court had passed the following order:

1. "After some arguments, learned counsel appearing for respondent no.2 states that the petitioner's bid of ₹ 2/- is obviously required to be rejected. He also submits that respondent no.2 is not in a position to accept any other bid from the petitioner unless it is processed by Government E-Marketplace SPV portal (hereafter *GeM*).

2. The learned counsel appearing for GeM submits that the petitioner's initial bid was clearly ₹ 2/- which was encrypted and sent to respondent no.2. GeM did not have any further role and was not required to forward any other bid that may have been keyed in by the petitioner subsequently.

3. Learned counsel appearing for the petitioner submits that there is a disputed question of fact as to whether the petitioner had in fact, furnished a bid of ₹ 2/- as claimed by GeM as the petitioner's login details indicate that the petitioner had logged in twice. He claims that the petitioner had punched in its substantial bid, which could not be ignored.

4. In so far as the petitioner's contention that its responsive bid was keyed in later is concerned, this Court finds that to be of little assistance. As explained by GeM, the initial bid was encrypted and was also subject to audit processes. The encrypted amount as now disclosed after de-encryption is ₹ 2/-. The fact that the petitioner may have attempted to key in any other bid at a later stage is of little relevance.

5. Learned counsel for the petitioner submits that in terms of the rules, the petitioner is entitled to modify its bid. This is stoutly contested by learned counsel for GeM. At this stage, we do not consider it apposite to examine this controversy.

6. Learned counsel for the respondent no.2 submits that only two bidders had furnished their bids and as the petitioner's bid is rejected, only one bidder remains. He also points out that respondent no.2 would face a difficulty in proceeding with the tender in these circumstances.

7. In view of the above, this Court directs learned counsel for respondent no.2 to seek instructions as to its proposed action if the



petitioner's bid is considered as non-responsive and the respondent no.2 is left to contend with only one bid. The respondent no.2 shall clearly disclose whether it intends to proceed further with a singular bid.

8. List on 23.12.2024.”

9. The learned counsel appearing for UBI submits, on instructions, that the tender is required to be cancelled as only one responsive bid was received.

10. The learned counsel for the petitioner submits that the petitioner after submitting its initial bid had also submitted a modified bid. He has also drawn the attention of this court to a screenshot which reflects the unit price as ₹2/-, the date and time is imprinted is: 2024-05-29 10:43:51 and the IP address is reflected as IP: 27.57.176.187.

11. The learned counsel for the petitioner has also drawn the attention of this court to two other screenshots; one reflecting the offer price as blank and reflects the time and date imprinted as 20:15 10-06-2024. The second screenshot shown by the petitioner indicates that certain documents had been uploaded. The said screenshot also reflects that an offer price had been uploaded. The time and date stamp of the screenshot indicates the time and date as 11:01 11-06-2024. It is contended on behalf of the petitioner that this implies that the petitioner had furnished an offer price after 20:50 hours on 10-06-2024.

12. We find no merit in the aforesaid contention. The second screenshot referred to by the petitioner merely reflects that an offer price had been uploaded by the petitioner. It does not reflect that the same was uploaded after 20:15 on 10-06-2024. More importantly, respondent No.1 has affirmed that the bid submitted by the petitioner was for a sum ₹2/- which was discovered on de-encrypting the same. The contention that the petitioner



had submitted a modified bid also, is unpersuasive.

13. As noted from the averments made in the petition, there was no averment to the effect that the petitioner had modified its bid at a subsequent point of time. It was not the petitioner's case as initially set up that it had submitted two bids. The petitioner's case was that it had submitted a single bid after internal discussion. The contention that the petitioner had submitted a bid for a sum of ₹ 7,22,16,000/- is stoutly disputed by the respondents.

14. In view of the above, we are unable to accede to the prayer that UBI must be compelled to continue with the bidding process and to the petitioner to join in the Reverse Auction.

15. We do not find any ground to interfere with UBI's decision to cancel the bid. The present petition is, accordingly, closed.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

DECEMBER 23, 2024

N.Khanna