



2024:DHC:9038-DB



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

+ W.P.(C) 16033/2024 & CM APPL.67390/2024

**MS LION SECURITY GUARDS SERVICES, MS AAKANKSHA
ENTERPRISES AND MS REKART INNOVATIONS PVT LTD, A
JOINT VENTUREPetitioner**

Through: Ms.Saahila Lamba, Advocate.

versus

MUNICIPAL CORPORATION OF DELHI & ANR.Respondents

**Through: Mr.Tushar Sannu, Advocate for
MCD.**

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Date of Decision: 20th November, 2024

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

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present petition has been filed challenging the order dated 6th November, 2024 issued by the Respondents, whereby the technical bid submitted by the Petitioner was declared non-responsive in respect of NIT No. EE(SLF)/OKHLA/MCD/2024-2025/02 dated 15th July, 2024.

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2. Learned counsel for the Petitioner states that the Office of the Executive Engineer (SLF) Okhla, Municipal Corporation of Delhi issued an NIT dated 15th July, 2024 for disposal of 20 lakh MT (2nd phase) of legacy waste by Bio-remediation and Bio-mining at Okhla Dumpsite, Delhi (“subject tender”).

3. She states that M/s Lion Security Guards Services, M/s Akanksha Enterprises and M/s Rekart Innovations Pvt. Ltd. formed a Petitioner joint venture on 30th August, 2024 for the purpose of execution of the work under the subject tender. She states that a Power of Attorney was executed by the three members of the consortium appointing M/s Lion Security Guards as a lead member of the joint venture consortium.

4. She states that the Petitioner joint venture submitted its technical bid on 10th September, 2024. She states that the Respondents declared the technical bid submitted by the Petitioner joint venture non-responsive on 6th November, 2024 on two minor counts i.e. (i) the Power of Attorney submitted by the Petitioner joint venture appointing M/s Lion Security Guards Services as lead member of the consortium was not signed by all members of the joint venture and (ii) Rekart Innovations Pvt. Ltd. has been declared as member in charge of joint venture in Form IV submitted by the Petitioner.

5. She states that due to an inadvertent error, M/s Rekart Innovations Pvt. Ltd. did not sign the Power of Attorney appointing M/s Lion Security Guards Services as lead member. She states that a fresh Power of Attorney signed by all three members of the consortium shall be submitted to the Respondents.



6. She further states that M/s Rekart Innovations Pvt. Ltd. has not been shown as a lead member in Form IV i.e. Joint Venture Agreement, but is only stated to be a member in charge of the consortium.

7. She submits that the action of the Respondents of declaring the technical bid of Petitioner joint venture as non-responsive on minor defects is illegal, particularly when such defects are curable in nature. In support of her submission, she relies upon the judgment of this Court in ***ABC Beverages Private Limited Vs. Indian Railway Catering & Tourism Corporation (IRCTC) Ltd. & Anr., W.P.(C) 2785/2017***, wherein it has been held as under:-

“12. In the present case, it is evidently a situation where the technical bid of the Petitioner was rejected by the IRCTC on technical grounds; the rejection was meted out in an arbitrary and discriminatory manner, since Surya, the second respondent was made aware of similar discrepancies for their correction, after the submission of bids. The distinction sought to be made between the filings in the petitioner’s documents and those of Surya, in the opinion of the Court, is artificial. In the petitioner’s case, at least, the public notary had attested the relevant documents in the Annexures-II, III and IV. Only the notary’s stamp was missing. That per se did not undermine the effectiveness of the documents. Possibly, in a court of law, the inadequacy of stamp would have resulted in impounding of the instrument leading to payment of penalty and the requisite stamp amount. However, that view would have arisen, only in the event of a dispute pertaining to the contents or dispute impinging upon something where the documents occupied a center stage. In other words, the documents were not in issue; a notary public attested them. Likewise, in the case of Surya, the second respondent, the requisite documents were not on the record. However, the tender committee observed that such documents were merely ancillary given that the registration number of the company was disclosed.....”

8. *Per contra*, learned counsel for the Respondent-MCD, who appears on advance notice, states that financial bids have been opened yesterday. He further points out that the petitioner, before filing the present writ petition,



has made no representation to the Respondent-MCD unlike another tenderer who had sought clarification / waiver of certain conditions.

9. It is settled law that it is always the decision making process which is amenable to judicial review and not the decision *per se*. Further, while dealing with the tender matters, the Court applies the Wednesbury principle of unreasonableness, i.e. that the decision is so unreasonable that no sensible person would have arrived at such a decision. While it is true that a minor technical irregularity like deviation from non-essential or ancillary terms of a tender condition can be waived, yet essential and substantive terms have to be complied with.

10. Even in the judgment cited by the learned counsel for the petitioner, what was waived was only the condition that the tender documents had to be notarised.

11. However, in the present case, the Power of Attorney which is an important/ substantive document has, admittedly, not been executed by one of the joint venture partners. This Court is of the view that such a power of attorney is an inchoate document which will have no sanctity in the eyes of the law.

12. Further, the joint venture agreement shows M/s Rekart Innovations Pvt. Ltd. as a member-in-charge of the joint venture, while by way of the Power of Attorney, the petitioner joint venture appoints M/s Lion Security Guards Services as the lead member of the Joint Venture.

13. This Court is further of the view that the member-in-charge has to be the lead member of the Joint Venture. Two different entities cannot be a member-in-charge and lead member of the Joint Venture.



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14. Keeping in view the aforesaid as well as the fact that the financial bids have already been opened, the present writ petition along with applications is dismissed.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

NOVEMBER 20, 2024
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