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

% *Date of Decision : 18.12.2024*

+ **W.P.(C) 17430/2024 & CM APPL. 74153/2024**

SAYO SECURITY SERVICES PVT LTDPetitioner

Through: Mr. Raghav Saluja, Advocate

versus

DIRECTOR AND MEDICAL SUPERINTENDENT, A.B.V.M.I.S
AND DR. RAM MANOHAR LOHIA HOSPITAL & ANR.

.....Respondent

Through: Mr. Vikram Jaitely, CGSC with Ms.
Shreya Jatily, Advocate and Mr.
Hussain Taqvi, GP

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

VIBHU BAKHRU, ACJ. (ORAL)

1. Issue notice. Learned counsel for the respondent accepts notice.
2. The petitioner has filed the present petition impugning the tender dated 11.07.2024 (Tender No. OSC-13013/5/2022-Outsrc.Cell-Dr. R.M.L.H.). The petitioner further prays that directions be issued for revaluation/review of the techno-commercial tender.
3. The respondent had invited online bids from eligible and qualified tenderers for management of parking sites on license fee basis at different areas/locations of Dr. R.M.L. Hospital on 24x7 basis for a period of one year from the date of finalization of the bid. The petitioner being desirous of securing the said contract had furnished its bid.



4. The technical bids were opened on 12.08.2024 and published on 04.12.2024. The petitioner's technical bid was rejected essentially on three grounds: first, that the petitioner did not have a valid experience in at least one 600 bedded hospital (for the period ending March, 2023); second, that it had not furnished proof of being registered as MSME/Start-up for the services tendered; and third, for non-compliance of additional terms and conditions alongwith supporting documents.

5. The petitioner submits that insofar as the first ground for rejection is concerned, the same is not applicable as the petitioner is registered as an MSME and in terms of the tender conditions, an entity registered as an MSME/Start-up is exempted from complying with the conditions regarding past experience or turnover.

6. Insofar as the second ground for rejection is concerned, the petitioner claims that it is registered as an MSME and therefore the petitioner's rejection on the said ground is erroneous. The third ground for rejection is stated to be vague and cryptic.

7. At the outset, it is relevant to refer to the Eligibility Criteria for Tenderers. Clause 2 of Section IV of the tender documents is relevant and is set out below:-

"2 Eligibility Criteria for Tenderers

2.1 In pursuant of clause 1 above, the Tenderer shall furnish, as part of its tender, relevant details and documents as mentioned in clause 2.2, 2.3 and 2.4 establishing its eligibility to quote and its qualifications to perform the contract if its tender is accepted.

2.2 The Tenderer who has earlier been debarred or blacklisted by any Central Government, State Government/PSU/Autonomous Bodies or any Government authorities in India shall not be eligible for submitting the tender.



2.3 The documentary evidence needed to establish the Tenderer's qualifications shall fulfill the following requirements:

a) The Tenderer must have average Annual Financial Turnover during the last three years ending 31st March of the previous financial year at least 30% (thirty) of the annual reserved price for license fee. The MSE and Start-up are exempted from Turnover and Years of Experienced.

b) The Tenderes must have atleast three years experience (ending month of March 2023) of providing Public Parking Services in a setup of at least 600 bed strength Central Government Hospitals/ Private Hospitals, Educational Institutes. Service rendered with list of such organization with duration of service and satisfactory performance certificate shall be furnished.

c) The Tenderer must have successfully executed and completed parking service, over the last three financial years ending on 31.03.2023:

i) Three similar completed services/contracts costing not less than the amount equal to 40% of the reserved price ; or

ii) Two similar completed services/contracts costing not less than the amount equal to 50% of the reserved price; or

iii) One similar completed service/ contract costing not less than the amount equal to 80% of the reserved price.

iv) The Tenderer must enclose copies of work orders and experience in parking services for each of the last three years ending on 31.03.2023 and details of services under way or contractually committed; and names and address of clients who may be contacted for further information on those contracts.”

8. As apparent from the above, the tenderer was required to fulfill the minimum criteria of atleast three years experience in Public Parking Services in a setup of atleast 600 bed strength Central Government Hospitals, Private Hospitals, Educational Institutes. The said criteria would not be applicable for an MSME.



9. It is contended on behalf of the respondent that the petitioner neither fulfilled the criteria of experience nor the criteria of being registered as an MSME in the relevant category.

10. The attention of this Court is drawn to the registration certificate furnished by the petitioner, which indicates that the petitioner is registered as an MSME for the '*Private Security Activities*' and '*General Household Maintenance Activities*'. The relevant extract of the Registration Certificate, as placed on record, is reproduced below:-

“

S.No.	NIC 2 Digit	NIC 4 Digit	NIC 5 Digit	Activity
1	80 - Security and investigation activities	8010 - Private security activities	80100 - Private security activities	Services
2	96 - Other personal service activities	9609 - Other personal service activities n.e.c.	96098 - General household maintenance activities like grooming of the floor, dusting, cleaning of utensils etc.	Services

”

11. The learned counsel for the respondent has also drawn attention of this Court to the section of bid document regarding '*Technical Bid*' as well as the '*Check List*'. Paragraph 5 of Section VII '*Technical Bid*' is relevant and is set out below:-

S. No.	Technical Criteria	Complied/Not complied (Yes/No)
5	The Tenderer seeking exemption from project experience and Turnover must submit valid supporting document <i>for the relevant category</i> (MSME/Start-up).	



	<i>Under MSME category only service providers for services</i> are eligible for exemption from project experience and turnover. Traders are excluded from the purview of this clause.	
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[emphasis added]

12. It is apparent from the above that in order to claim an exemption from criteria of turnover and experience, the bidder was required to file a document '*for the relevant category*'. The bid document also specifies that only service providers for services under the MSME Category are eligible for exemption from project experience and turnover.

13. Paragraph 3 of the Check-List, as set out in Section IX of the bid document, also clearly indicates the same. The said entry is set out below for ready reference:-

Sl.No.	Activity
3.	Are you a MSME or Start-up unit seeking exemption from Project experience and turn over. If yes, have you enclosed certificate/proof of valid registration indicating the terminal validity of date registration <i>for the tendered item</i> with any agency mentioned in the notification of the Ministry of Micro, Small and Medium Enterprises (GIT 14.2).

[emphasis added]

14. Learned counsel for the petitioner is unable to controvert that the petitioner was not registered with MSME in the category of services for which the tender was floated (Parking Services). He however submits that the petitioner had furnished his bid pursuant to similar tenders floated in the past and its bids were found to be technically responsive. He submits that therefore the petitioner's bid pursuant to invitation to tender in question be also considered, as responsive.

15. We are unable to accept the aforesaid contention. Merely because the petitioner's bids were found to be technically responsive on earlier



occasions, it cannot be a ground for accepting the petitioner's technical bid as valid notwithstanding that the petitioner does not comply with the eligibility criteria as set out in the bid document.

16. Insofar as the third ground for rejection is concerned, Mr. Vikram Jaitely, the learned counsel appearing for the respondent fairly states that the same may be ignored.

17. In view of the above, we find no infirmity with the decision of the respondent in rejecting the petitioner's technical bid on the ground that the petitioner does not qualify the eligibility criteria.

18. Learned counsel for the petitioner also submits that one of the bidders has been blacklisted and does not fulfill the conditions, as stipulated, and yet is being considered. It is stated that the petitioner has made a complaint in this regard, however, the same has not been considered. Mr. Jaitely submits that the petitioner's complaint has been forwarded to the concerned authority and if it is found that any of the bidders does not satisfy the eligibility criteria, the necessary steps would be taken.

19. In view of the above, we do not find it necessary to issue any directions in this regard.

20. In view of the above, the petition is dismissed.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

DECEMBER 18, 2024

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Click here to check corrigendum, if any