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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3071/2024, CM APPL. 12679/2024 & CM APPL. 16830/2024**

ELEVENTURE SYSTEMS AND SERVICES PRIVATE LIMITED
.....Petitioner

Through: Mr. Mayank Wadhwa, Ms. Muskan Gupta, Ms. Shaya Goel and Ms. Yukti, Advocates

versus

GAIL GAS LIMITEDRespondent

Through: Ms. Purnima Maheshwari, Standing Counsel with Mr. D.K. Singh, Advocate

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

ORDER
10.01.2025

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

- a) “Allow the present petition and issue a writ of Certiorari and/or any other appropriate writ for quashing/setting aside of Fax of Acceptance dated 25/01/2024 issued by the Respondent to the Petitioner against tender bearing no. 05/51/23V1-U999/GAIL Gas/001-ii-08 having tender ID 2023_GAILG_166655 floated by Respondent on 06/09/2023;
- b) Issue a writ of mandamus and/or any other appropriate writ while directing the Respondent to award the tender for Part C to the Petitioner in terms of the tender for the entire scope of work;”



2. The respondent had issued a notice inviting tenders for Aboveground GI Installation including Last Mile Connectivity at Consumer end for four parts. Essentially, bids were invited providing the Last Mile Connectivity from pipelines to separate consumers. The bids were invited in respect of provision of facilities for four areas (four parts) being Part A – Dakshin Kannada; Part B – Sundergarh – Jharsuguda; Part C – Puri, Ganjam, Nayagarh, Gajapati; and Part D – Dehradun.
3. The petitioner participated in the tendering process and submitted its bid on 28.09.2023 with the respondent for Part B, C and D.
4. The financial bids of the petitioner were opened and the petitioner was not the lowest bidder either in respect of its bids submitted for Part B or for Part D. However, it was declared as L-1 in respect of its bid submitted for Part C. The petitioner was the sole bidder for Part C.
5. Since the petitioner was the sole bidder, the respondent called upon the petitioner to reduce its bid commensurate with the decrease to the cost estimates for Part B and Part D, respectively.
6. Thereafter, the petitioner was sent a communication dated 03.01.2024 calling upon the petitioner to enter into price negotiation for award of tender of Part C. The said negotiations were held on 05.01.2024 and it was mutually decided that the petitioner would revise its quoted price at (+) 7.50% over the estimated price in place of the quoted of (+) 9.91%.
7. Thereafter, on 25.01.2024, the respondent issued Fax of Acceptance, accepting the petitioner's bid for only 15% of the quantities for which bids were invited. The principal dispute raised by the petitioner in the present petition relates to the quantum of work awarded to the petitioner. It is the



petitioner's case that a minimum of 28% of the total quantum of work ought to have been awarded to the petitioner in terms of the tender conditions. It is also submitted on behalf of the petitioner that since the petitioner was the only bidder, the entire work could also be awarded to the petitioner; yet the quantum of work awarded to the petitioner was confined only to 15% of the total work.

8. The petitioner impugns the Fax of Acceptance dated 25.01.2024 to the aforesaid extent.

9. The petitioner had also filed an interim application seeking an order restraining the respondent from inviting tenders for further quantities. The said application being CM APPL. 16830/2024 was taken up for hearing on 19.03.2024 and this court had passed the following order:-

“C.M.No.16830/2024

1. Present application has been filed under Order XXXIX Rules 1 & 2 CPC seeking stay qua Part C in a tender issued by the respondent on 08th March, 2024.

2. Learned counsel for the applicant/petitioner states that the respondent has re-floated the tender on 08th March, 2024 for all the four parts which were originally issued on 06th September, 2023. He states that the respondent awarded only 15% of scope of work against the bid price of the petitioner for entire scope of work and the respondent has now re-floated the tender inclusive of Part C for the entire work even when the FOA issued towards 15% of entire scope of work is sub-judice before this Court.

3. He states that the petitioner has received an email dated 11th March, 2024 in response to his email dated 16th February, 2024 wherein it has been averred by the respondent that 15% of the work for Part C has already been awarded to the petitioner and the tender stands concluded and therefore, no further action can be taken by the respondent. He states that even in the email dated 11th March, 2024, the respondent did not inform the petitioner that the original tender



has been refloated on 08th March, 2024.

4. Learned counsel for the respondent, who appears on advance notice in the present application, states that the new tender has only been floated for 85% of the contract and not for the 15% that has been awarded to the petitioner.

5. However, learned counsel for the petitioner insists that an interim order is required even for the balance 85% of the contract.

6. In response to a pointed query, learned counsel for the petitioner candidly admits that it will not be viable for the petitioner to perform 15% of the awarded contract at the negotiated price. He states that the petitioner is willing to perform 15% of the contract at the initial price offered by the petitioner and not at the subsequent negotiated price.

7. In view of the aforesaid statement, we leave it open to the respondent to take a decision as to whether the entire contract needs to be re-tendered or only 85% of the contract needs to be re-tendered. At this stage, learned counsel for the respondent prays for some time to obtain instructions. List on 21st March, 2024.”

10. As is apparent from paragraph 6 of the aforesaid order, the learned counsel for the petitioner had indicated that the petitioner is not willing to perform 15% of the contract awarded to him at the negotiated price but was willing to do so at the initial price offered by the petitioner. In the aforesaid context, this court had left it open for the respondent to take a decision to either re-tender the entire quantum of work for which the subject tender was floated or for only the balance 85% of the scope of work that was not awarded to the petitioner.

11. The said application was taken up for hearing on 21.03.2024, thereafter, and this court had passed the following order:-

“CM APPL. 16830/2024



1. In continuation to the order dated 19th March, 2024 passed by this Court, learned counsel for the Respondent-GAIL states that the 85% quantity re-tendered is to be concluded forthwith as there are connections which are on urgent basis. She states that the 15% quantity would be covered and added in the next tender which shall be taken for fresh requirement. The said statement made by the learned counsel for the Respondent-GAIL is taken on record and the Respondent-GAIL is permitted to proceed with the same.

2. List on 09th April, 2024, i.e., the date already fixed.”

12. This court is now informed that the respondent had floated a fresh tender for 85% of the work that fell within the scope of the notice inviting tenders dated 06.09.2023. It is also stated that the said work has since been completed.

13. Insofar as 15% of the quantum of work that was awarded to the petitioner is concerned, the petitioner did not execute the said works. This court is informed that the respondent had taken a decision to add the said quantum of work to the scope of work for which tenders may be invited in future. The learned counsel for the respondent also states that the petitioner has not been impeded in any manner in participating in bidding process. She further submits that the petitioner had, in fact, participated in tenders floated thereafter and was also declared L-4 in respect of its bid submitted pursuant to one such tender floated by the respondent.

14. It is at once clear that the prayers as sought for by the petitioner cannot be granted. First of all, as far as the petitioner's challenge to Fax of Acceptance dated 25.01.2024 is concerned, the same is rendered academic as the petitioner has not been compelled to execute 15% of the work. Further, no contract was executed between the petitioner and the respondent for execution of any work in excess of the 15% that was offered. The



respondent is also not insisting that the petitioner executes the balance 15% of the work.

15. Therefore, setting aside of the Fax of Acceptance dated 25.01.2024 – as prayed for by the petitioner – would serve a little purpose. Insofar as the petitioner's prayer that directions be issued to the respondent to award the balance part of the work relating to Part C to the petitioner is concerned, no such relief can be granted as according to the respondent, the bids were invited for the balance 85% of the work and the successful bidder is in the process of completing the same.

16. In view of the above, the present petition is disposed of. Pending applications also stand disposed of.

17. We clarify that this order would not preclude the petitioner from claiming any other relief, if the petitioner is otherwise entitled to, in accordance with law.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

JANUARY 10, 2025

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Click here to check corrigendum, if any