(2016) 08 CAL CK 0016

In the Calcutta High Court

Case No : Writ Petition No. 12361 (W) of 2016 With (C.A.N. No. 7140 of 2016) & (C.A.N. No. 7213 of 2016) & (C.A.N. No. 7214 of 2016)

Bansidhar Majhi APPELLANT

Vs

State of West Bengal RESPONDENT

Date of Decision : 04-08-2016

Acts Referred:
Income Tax Act, 1961 — Section 139(4)

Citation : (2017) 2 WBLR 208

Hon'ble Judges : Joymalya Bagchi, J.

Bench : Single Bench

Advocate : Swarup Pal, Advocate, for the Appellant; Pantu Deb Roy, Subrata Guha Biswas, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Joymalya Bagchi, J.—The writ petitioner has challenged the disqualification of his technical bid in a tender for supply of cooked food floated by the respondent authorities in respect of Raghunathpur Sub- Divisional Hospital. The grounds for disqualification were communicated on the earlier date by the learned advocate for the respondents by submission of a report which reads as follows:

1) "Prefessional Tax Registration/any Challan deposited in last six months from scheduled date of e-tender opening has not been submitted by the petitioner [Clause 12.2A(ii) of bid document].

2) Performance Statement as contained in Clause 12.2C is submitted without notarized certification authenticating the correctness of the information furnished as per Clause 3 of Section VI (General Condition of Contract).

3) Audited Balance Sheet & Profit & Loss A/c for the period 1st April, 2015 to 31st March, 2016 has not been submitted by the petitioner whereas the bidders are to submit Audited Balance Sheet & Profit & Loss A/c of last three years as per

Clause 12.2D(i) of bid document.

It may be mentioned herein that in terms of Section 139(4) of Income Tax Act, 1961 the permissibility of filing of a return after the close of a financial year cannot be lost sight of the purpose of obtaining the audited balance sheets and profit and loss accounts which is to assess the financial strength of the relevant bidder and the audited balance sheet and profit and loss account as referred to in the tender conditions had nothing to do with the income tax return required to be filed by the bidder as an Assessee.

It is contemplated in clause 18.3 of Section VII of the tender terms that if any document required to be submitted for e-tender by the bidder in his technical proposal is not submitted or is found to be deficient in any manner at any stage after opening of bid, the bid may be summarily rejected.

The Tender Selection Committee for the aforesaid reasons has rejected the technical bid of Bansidhar Majhi, the Petitioner as per clause 18.3 of Section VII of the tender terms."

2. Mr. Swarup Pal, learned advocate appearing for the petitioner submits that his client had filed Challans evidencing deposit of professional tax for more than a year and his performance statement in terms of Clause 3 of the NIT was duly certified by the Superintendent of the concerned hospital. Requirement of notarisation of such certificate was optional. Audited balance sheet though not supplied by his client, other bidders namely, M/s. Rupa, M/s. The New Supply and M/s. The Jana were found qualified to participate in the finance bid notwithstanding such deficiency. Hence, such deficiency cannot be a ground to disqualify his client who stands on the same footing as the other qualified bidders.

3. Mr. Pontu Deb Roy, learned advocate appearing for the State-respondents submits that the petitioner has not come to Court with clean hands and had repeatedly sought to thwart the tendering process by approaching this Court earlier. Various orders have been passed by this Court permitting the tender process to continue and the present petition is another attempt to scuttle such effort.

4. I have considered the submissions of the respective parties. It may or may not be true that the petitioner had earlier attempted to challenge the tendering process. However, it is nobody''s case that the petitioner had been debarred from participating in the tender. The petitioner had submitted his bid in response to the notice inviting tender and such bid stood disqualified for the reasons, as stated hereinbefore. I am of the opinion that petitioner cannot challenge such decision as his prior efforts to assail the self-same tendering process was unsuccessful.

5. In order to adjudicate the correctness of such decision it is necessary to refer to the various clauses in the notice inviting tender. Clauses (3) and 12.3 of the Notice inviting tender read as follows:-

"3. Eligible and Qualified Bidders

3.1 The bidder should have supplied cooked diet for hospital patients in last 3 (three) years from the date of tender invitation, meeting major specification parameters, which has/is functioning satisfactorily, preferably, in a government or corporate Medical College and Hospital/hospital of similar bed strength in India.

PROFORMA FOR PERFORMANCE STATEMENT

(For the period of last three years)

(Submit with documentary evidence**)

Tender No. :_________________

Date of opening :_________________

Name and address of the Bidder :_________________

Order placed by (full address of Purchaser

Order No. and date

Description and quantity (eg. Cooked diet in `n''- bedded

Value of order (Rs.)

Period Contract

Remarks on Satisfactory Performance (attach documentary)

1

2

3

4

5

6

Signature and seal of the Bidder

**The documentary evidence will be a certificate or bill paid or TDS certificate issued by the purchaser/end user with cross-reference of order no. and date, preferably with a notarized certification authenticating the correctness of the information furnished.

3.3 The bidder should preferably have the registered office or a branch office in the city/district of the health facility.

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12.3. Non Statutory Cover will contain following documents

Sl. No.

Category Name

Sub-Category Description

Detail(s)

A.

Certificate(s)

Certificate(s)

i. Income Tax PAN

ii. Professional Tax Registration/any Challan deposited in last six months from scheduled date of etender opening

iii. Service Tax Registration along with copy of last return filed

iv. ESIC Code Number Allotment for bidders employing more than 10 persons along with copy of last return filed

v. EPFO Registration for bidders employing minimum 20 persons along with copy of last return filed

B.

Company Detail(s)

Company

Detail(s)

i. Certificate of Incorporation/ Partnership Deed

ii. Updated Trade Licence

iii. Power of Attorney in favour of signatory of bid

C.

Credential

Credential ? 1

Credential - 2

Performance Statement as per format described in General Conditions of Contract, Clause 3; with supporting documents

D.

Documents

Documents

i. Audited Balance Sheet & Profit & Loss A/c of last 3 years

ii. Name, address of banker, account number

iii. Bank Solvency Certificate on any date after publishing of this etender for an amount equal to 3 (three) months'' total bill for supplying full rice diet at rate quoted by bidder at full bedoccupancy of health facility, plus the minimum statutory emoluments payable to the maximum staff deployable at that facility during this period

iv. Address proof for registered and/or branch office of bidder, preferably in district of health facility

v. Bidder''s Undertaking as per General Instructions to Bidders, Clause 13 below

6. The first ground for rejection of the technical bid of the petitioner is that the petitioner did not deposit professional tax registration along with his said bid. Clause 12.3(ii), inter alia, requires the petitioner to deposit `Professional Tax Registration/any Challan deposited in last six months from scheduled date of e-tender opening''.

7. It appears that the petitioner has deposited Challans dated 17th September, 2015 and 2nd June, 2016 evidencing payment of professional tax for the period from 1st April, 2015 to 31st March, 2016 and for the period from 1st April, 2016 to 31st March, 2017 respectively. Such Challans are produced in court today and it is not disputed by the respondent authorities that such challans were submitted with the technical bid of the petitioner. The same be kept with the record.

8. From the aforesaid fact it is clear that the petitioner had deposited Challans evidencing payment in the last six months from the scheduled date of opening of e-tender. Plane reading of Clause 12.3(ii) shows that such Challans may be deposited in lieu of professional tax registration. I am, therefore, satisfied that the aforesaid term of the tender had been duly complied with by the petitioner.

9. The next issue for disqualification was that the performance certificate to be submitted in terms of clause 12.2C of NIT was not duly notarized in terms of clause 3 of the aforesaid tender conditions. A conjunct reading of clauses 12.2C and 3 would show that notarization was an optional exercise. The performance certificate was duly certified by the Superintendent of the concerned hospital where the petitioner had supplied food and in my considered opinion, the documents submitted by the petitioner were in due compliance with the aforesaid tender conditions.

10. It is true that the petitioner, however, did not furnish the audited balance sheet and Profit & Loss A/c. for the period from 1st April, 2015 to 31st March, 2016 along with his bid as required by clause 12.2D(i) of the tender conditions. It has been argued that the said condition was not treated as a mandatory one as other tenderers namely, M/s. Rupa, M/s. The New Supply and M/s. The Jana

who did not furnish such audited balance sheet were found to be technically qualified.

11. This fact is not disputed by the learned advocate for the State-respondents.

12. Accordingly, I am constrained to hold that the tendering authority did not treat the aforesaid condition as mandatory and hence, disqualification on such condition alone cannot be held to be justified.

13. Under such circumstances, the decision of the tendering authority to disqualify the petitioner found to be contrary to the terms of tender and is set aside. The petitioner shall be permitted to participate in the finance bid, if he is otherwise considered to be eligible in terms of the aforesaid tender conditions.

14. With the aforesaid directions, the writ petition is disposed of.

15. In view of disposal of the writ petition, nothing remains in the applications for addition of party filed by the applicant/bidders being C.A.N. 7140 of 2016, C.A.N. 7213 of 2016 and C.A.N. 7214 of 2016 and those are accordingly, disposed of.

16. There shall be no order as to costs.

17. Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.