(2014) 12 DEL CK 0286

In the Delhi High Court

Case No : Writ Petition (Civil) 8462/2014

Bharat Power Control System APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Citation : (2014) 12 DEL CK 0286

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Tanuj Khurana and Gaurav Malik, Advocate for the Appellant; Vivek Goyal, CGSC and Kumar Jwala, Advocate for the Respondent

Judgement

Badar Durrez Ahmed, J.

CM No.19590/2014 (Exemption)

The exemption is allowed subject to all just exceptions.

W.P.(C) 8462/2014 & CM No.19589/2014 (Stay)

1. The petitioner is aggrieved by the impugned communication dated 30.10.2014 issued by the Executive Engineer, Central Public Works Department, Parliament House Annexe Project Electrical Division. By virtue of the impugned letter dated 30.10.2014, the petitioner''s bid pursuant to the respondents NIT for extension of Parliament House Annexe, Parliament House Complex, New Delhi (SH-UPS, Solar Power & Solar Water Heating) was rejected on the ground that the petitioner does not fulfill the eligibility requirement for turnover and profit & loss stipulated in the bid document. The respondents while scrutinizing the documents with regard to the eligibility of the petitioner found that the document in respect of the turnover and profit & loss pertained to M/s. Labotek and did not pertain to the petitioner.

2. It is the petitioner''s case before us that the petitioner was a partner in the firm M/s. Labotek and had 50% share in the profits of the said firm. The

petitioner referred to and relied upon Section 15.2.5 of the CPWD Works Manual, 2014 (hereinafter referred to as the ''said Manual'') . The said Section 15.2.5 of the said Manual pertains to past experience of works executed and is in respect of a non-CPWD contractor. The petitioner is a non-CPWD contractor and, therefore, claims that Section 15.2.5 of the said Manual ought to be reckoned for construing the past experience of the works executed. Section 15.2.5 of the said Manual reads as under:-

"15.2.5 Past experience of work executed: A non-CPWD Contractor shall be eligible to tender for works based on the past experience gained from the works executed by the earlier firm (partnership firm) in the same proportion of share of the applicant in that partnership firm where the applicant was a partner earlier. (Modified vide OM DG/MAN/282 dt. 08.07.2013) ."

3. It is the submission of the learned counsel for the petitioner that since the petitioner is a non-CPWD contractor, he was eligible to tender for the subject work based on the past experience gained from the works executed by the earlier firm (partnership firm) (M/s Labotek) in the same proportion of share of the petitioner in that partnership firm.

4. As pointed out above, the petitioner was a partner in M/s. Labotek and had a 50% share therein. The said partnership was, however, dissolved by virtue of a dissolution deed dated 31.05.2013. The relevant clauses of the Dissolution Deed are as under:-

"3. All the profits and losses of the firm for the months of April and May, 2013 shall be vested in the Party of the Second Part. The party of the First Part was not actively working for the business of the partnership firm. Therefore, remuneration is also not being paid to him for this period. Neither, party of the First Part is claiming any interest on his capital from the firm. That is all the profits or losses shall accrue to the party of the Second Part.

4. The business of the Firm shall be continued to be carried on by the Party of the Second Part (alone and as the sole proprietor thereof) as from the said date and the Party of the First Part withdraws from the partnership and shall have no claim thereto except to the extent hereinafter mentioned.

xxxx xxxx xxxx xxxx xxxx xxxx

8. The party of the First Part herewith also foregoes his share in the goodwill, which is valued approximately at Rs.12,15,00,000/- (Rupees Twelve Crore Fifteen Lacs Only) of the firm, to the Party of the Second Part. However, he shall have the right of claim of his work experience in the firm which he has naturally earned by virtue of his being a working partner in the said firm."

5. Along with the bid submitted by the petitioner, a Chartered Accountant''s Certificate regarding the turnover and profit & loss during the last three assessment years was given. The certificate from the Chartered Accountant is reproduced below:-

"K. SIKRI & CO

CHARTERED ACCOUNTS

6/79, W.E.A. Gurudwara Road,

Karol Bagh, New Delhi-110005

Ph: 28757152, 65458111

TO WHOM SO EVER IT MAY CONCERN

We have examined the books of accounts and other related documents including Audited report and Balance Sheet and Profit & Loss Account of M/s. Labotek, 1/6, Kirti House, Kirti Nagar Industrial Area, New Delhi - 110015 (PAN:AABFL6009R) , and certify that the said firm has not incurred any losses during the last three assessment years and its turnover and profit therese three years was as follows:

For K. SIKRI & CO

Chartered Accountant

(CA KRISHAN SIKRI)

M. No.085481"

6. According to the learned counsel for the petitioner, since the petitioner was a 50% partner in the firm M/s. Labotek, he is entitled to claim 50% of the turnover and profit of M/s. Labotek for the above mentioned three years. He submitted that if that were to be so, then the petitioner would be eligible inasmuch as 50% of the turnover for each of the years referred to above would be more than Rs.191 lakhs, which was the requirement as per the NIT. Consequently, he submitted that the rejection of the petitioner''s bid on the ground of non-fulfillment of the eligibility conditions was bad.

7. The learned counsel appearing on behalf of the respondents submitted that first of all the subject tender was not for ''normal works'' but was a tender for ''specialized works''. He submitted that Section 15 of the said Manual and in particular Section 15.2.5 on which the petitioner was placing reliance was applicable only for ''normal works''. There is no such similar condition in the tender for specialized works, which are specifically dealt with under Section 16 of the said Manual. Therefore, the petitioner cannot take the benefit of Section 15.2.5 of the said Manual. Secondly, the learned counsel for the respondents submitted that even if it was assumed without admitting that Section 15.2.5 of the said Manual was applicable to the subject tender, the petitioner still does not fulfill the eligibility criteria. The learned counsel for the respondents drew our attention to the clauses of the Dissolution Deed which we have already extracted above and submitted that the firm M/s. Labotek was dissolved on 31.05.2013 and that in the months of April and May, 2013 the Dissolution Deed specifically records that the petitioner (who was referred to as ''the party to the first part'' in the Dissolution Deed) did not even participate actively in the activities of the

firm. Therefore, no part of the turnover of M/s. Labotek for the financial year ending 31.03.2014 can be attributed to or be taken credit of by the petitioner.

8. In other words, according to the learned counsel for the respondents, the turnover of the petitioner on the basis of the documents submitted by him for the financial year ending 31.03.2014 would be nil. Therefore, even if it was assumed without admitting that Section 15.2.5 of the said Manual was to apply to the subject tender, the petitioner would, in any event, not be eligible. For these reasons, the learned counsel for the respondents submitted that the writ petition ought to be dismissed.

9. Upon considering the rival conditions of the parties, we are of the view that we need not examine the issue as to whether it was a tender for ''normal works'' or for ''specialized works''. In other words, we need not give a definite answer as to whether Section 15 would apply or Section 16 would apply. This is so because even if we assume that Section 15 of the said Manual was to apply and that the present tender was one for ''normal works'', the petitioner still does not qualify. There are several reasons for this conclusion. First of all, the firm M/s. Labotek was dissolved on 31.05.2013 and, by virtue of Clause 3 of the Dissolution Deed it was evident that the petitioner had played no part at all in the months of April and May, 2013. As such no part of the turnover of the firm M/s. Labotek could be attributed to the petitioner for the period after 31.03.2013. In other words, the petitioner could not claim any turnover of M/s. Labotek as attributable to him for the financial year ending 31.03.2014. That being the position, the financial turnover insofar as the petitioner is concerned, for the year ending 31.03.2014 would be nil as no other evidence of turnover has been submitted by the petitioner for that financial year. This would be in clear violation of paragraph 1(b) of the ''Information and Instructions for Contractor for e-tendering forming part of the NIT''. The said clause 1(b) reads as under:-

"The firm/contractor who fulfills the following requirements shall eligible to apply. Joint ventures are not accepted.

(a) xxxx xxxx xxxx

xxxx xxxx xxxx

(b) should have annual financial turnover of Rs.191 lakhs during last three years ending 31st March 2014. (Scanned copy of the certificate from CA to be uploaded) .

xxxx xxxx xxxx"

10. The above clause 1(b) makes it clear that the bidder must have an annual financial turnover of Rs.191 lakhs during the three years ending 31.03.2014. We have already indicated that in the financial year ending 31.03.2014, the petitioner has not produced any evidence to indicate that it had any turnover independent of M/s. Labotek. Insofar as the turnover of M/s. Labotek for the financial year ending 31.03.2014 is concerned, we have already held that the

petitioner can claim no part of it.

11. The second reason as to why the petitioner would not be eligible is that the Chartered Accountant''s Certificate which we have extracted above, refers not to financial years but to assessment years. The assessment year 2013-14 would mean the financial year ending on 31.03.2013. In other words, the certificate does not even give the turnover for the financial year 31.03.2014 which was a requirement under the above mentioned Clause 1(b) . For this reason also, the petitioner is ineligible, even if we take into account Section 15.2.5 of the said Manual.

12. We also require to deal with the submission of the learned counsel for the petitioner that as per Clause 8 of the Dissolution Deed (which has been extracted above) , the petitioner has a right to claim his work experience in the firm M/s. Labotek which he has naturally earned by virtue of his being a working partner in the said firm. Even if we grant this to the petitioner, it is clear that this would operate, if at all, only up to the end of the financial year 31.03.2013 because the petitioner had no active contribution for the months of April and May, 2013 and on 31.05.2013 the firm was dissolved. Therefore, this would have no bearing for the financial year ending 31.03.2014.

13. For the aforesaid reasons, the petitioner has no case. The writ petition is dismissed. The pending application also stands disposed of. There shall be no order as to costs.