(2018) 04 RAJ CK 0147

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7553 of 2017

IDL Explosives Limited @APPELLANT@Hash State of Rajasthan

Date of Decision : 06-04-2018

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2018) 04 RAJ CK 0147

Hon'ble Judges : SANDEEP MEHTA, J

Bench : Single Bench

Advocate : Pancham Surana, Surendra Singh, G.J. Gupta, Anil Bhansali

Final Decision : Disposed Off

Judgement

The matter is today listed for orders on the interlocutory application No.1598/2018 filed by the learned counsel Shri Pancham Surana for bringing a

document on record. Learned counsel for the respondents do not object to the said application. Thus, the interlocutory application is hereby allowed

and the document is taken on record.

With the consent of the learned counsel for the parties, final arguments were heard on the writ petition and the matter is being decided today itself.

Facts in brief are that the petitioner herein claims to be having extensive experience in the business of manufacture, production, preparation, import,

export, etc. of detonators, industrial explosives, explosive accessories, etc. The respondent Rajasthan State Mines and Minerals Limited invited online

tenders in electronic form through its E-portal from individuals/ firms/ companies for manufacture and delivery of Bulk Site Mixed Emulsion Explosive

down the hole at Jhamarkotra Rock Phosphate Mines, Udaipur with the estimated total quantity being around 7500 metric tones. The period of

contract was stipulated as 60 months. The tender was uploaded on the website on 03.11.2016. The aspiring applicants were required to submit their

bids online in the electronic form as prescribed in the tender. The complete bid document was published on the site of the

www.rsmm.com/eproc.rajasthan.gov.in, for the purpose of downloading. It was conveyed that the tender shall be perqualified on the basis of

documents/credentials/downloaded alongwith Techno-commercial bid and the company reserved its right to call for any additional information so as to

verify the tendererâ??s eligibility. The tender document also stipulated that the BOQ Format must not be modified/replaced timely by the bidder and

the same should be uploaded after filling the relevant columns else the bid would be liable to be rejected for this tender. Various corrigendums were

also issued in the tender process and the last date for submission of tenders was extended till 27.12.2016. Only two bidders namely the petitioner

herein and the respondent No.4 Solar Industries India Limited submitted their bids in pursuance of the said E-tender. The technical bids were opened

on 05.01.2017. On 08.02.2017, information was uploaded to the effect that both the bids were found techno-commercially qualified for price bid

opening. The financial bids were opened on 10.02.2017 and the summary thereof was uploaded on the E-portal previously intimated. The petitioner

was ranked as the lowest bidder because its rate was significantly lower than that offered by the respondent No.4 herein i.e. Solar Industries India

Limited. The petitioner claims that it had strictly adhered to the required stipulations in the manner of quoting the basic rate in the BOQ Format. The

petitioner also claims that immediately after the financial bids had been opened, the respondent No.3 i.e., the General Manager (Contract), RSMML,

directed it to submit the price break up in Form-7 of the tender document because the online Form-7 submitted by the petitioner was inadvertently left

blank. The petitioner was advisedÂ vide letter dated 15.02.2017 to furnish hardcopy of the form offline. It is claimed in the writ petition that the

information contained in Form No.7 is only for the internal use of the RSMML and is not an essential part of the tender. The petitionerâ??s further

plea is that the basic rate stipulated by a bidder in the online item rate BOQ Form-6 is the sole criterion for determining the financial bid and the price

break up as stipulated in the Form-7 is not material/relevant for determining the same. The petitioner has asserted that despite its bid being lower and its rightful claim to be declared the lowest bidder, the respondents colluded with each other and contrary to the lawful process of tender evaluation, the

respondent No.4 was invited for negotiations vide communication dated 19.04.2017 and thereafter, the respondent No.4 revised its basic rate to the

prejudice and detriment of the petitioner. The petitionerâ??s representative visited the office of RSMML and inquired about the status of the tender

on which, he was apprised that respondent No.4 M/s. Solar Industries India Limited has been adjudged to be the lowest bidder and a letter of

authorisation had already been issued to it. The letter of authorisation came to be uploaded on the website on 27.04.2017 whereby, the petitionerâ??s

bid was rejected and the bid of the respondent No.4 was accepted. These letters/ communications dated 27.04.2017 and 08.05.2017 are assailed in

this writ petition preferred on behalf of the petitioner under Article 226 of the Constitution of India.

Learned counsel Shri Pancham Surana vehemently urged that the petitionerâ??s price bid had been accepted by the respondents when the financial

bids were opened. The petitioner was declared to be lowest bidder whereas, the bid offered by respondent No.4 was significantly higher. He urges

that the Form7 which requires break up of the price was not an integral part of the tender and thus, the respondents are not entitled to draw any

adverse inference on account of inadvertent uploading of the blank form by the petitioner. He contends that the respondent No.3 advised the petitioner

to submit the hard copy of Form BOQ7 offline and the petitioner duly complied with such advise and submitted the offline form in the prescribed

performa and thus, the respondents are estopped from taking a plea that the petitionerâ??s tender documents were incomplete/deficient on account

of non-uploading of the Form-7. He thus urges that the rejection of the petitionerâ??s bid and the grant of the work order to the respondent NO.4 vide

the detailed letter of acceptance dated 27.04.2017 is absolutely illegal, arbitrary and perverse and hence, the same deserves to be quashed and struck

down.

Per contra, learned counsel representing the respondents have drawn the Courtâ??s attention to the condition No.3.13(i) of the detailed e-tender

wherein, it is clearly stipulated that the tenderer should carefully read the instructions mentioned in the performa on Form-6 BOQ and 7 for quoting the price offer and that the price bid shall be submitted online in the prescribed BOQ format only. They urged that the Forms No.6 and 7 were undeniably

integral parts of the e-tender and had to be mandatorily filled and uploaded by the bidder alongwith the online bid. Admittedly, the petitioner left the

Form-7 blank while while uploading its bid on the portal. Thus, they contend that petitionerâ??s tender document should have been rejected outright.

They submit that when the petitioner was asked to submit the offline BOQ Form-7, the column No.6 thereof was altered and in place of â??other

chargesâ??, the word â??discountâ?? was substituted and in this manner, the financial bid was sought to be manipulated.

Shri Gupta submits that it is impermissible for the bidder to modify any of the terms and conditions of the tender document of which, the Form-7 forms

an integral part. He contends that it is with the intent to defraud and manipulate the price bid that the petitioner intentionally left the Form-7 blank. It is

further pointed out that the basic rate quoted by the petitioner in the offline Form-7 is Rs.29520/- per metric ton whereas, the basic rate quoted by the

respondent No.4 Solar Industries India Limited in the online Form-7 was Rs.28,800/- per metric ton and thus, the rate of the respondent No.4 was

lower. The petitioner intentionally did not give the online price break up in the Form-7 which, if considered in light of the hard copy, clearly indicates

that the rate quoted by the petitioner is higher than what was quoted by the respondent No.4. They urge that after the financial bid had been opened,

the petitioner intentionally manipulated Form-7 and substituted the column â??discountâ?? in place of â??other chargesâ?? so as to fraudulently

portray its gross rate to be lower then that what was offered by the respondent No.4 Solar Industries India Limited. As per the learned counsel for the

respondents, the petitionerâ??s intentional omission in filling and uploading the complete Form-7 was aimed at deceit and thus, it is not entitled to

equitable relief under the writ jurisdiction of this Court.

In rejoinder, Shri Pancham Surana had no option but to concede that the basic rate quoted by the petitioner in the hard copy of Form-7 is well above

the basic rate quoted by the respondent No.4 in its Form-7. Shri Surana also conceded that the online Form-7 which is an integral part of the e-tender

was left blank by the petitioner at the time of uploading its bid. He however took a plea that if at all, the petitionerâ??s bid was deficient on any count, the respondents should have rejected the same as non-qualified and in such a situation, the petitionerâ??s earnest money/ security would have

been refunded in accordance with Point No.3.18 of the tender conditions. He thus prays that the respondents may be directed to refund the earnest

money of the petitioner.

I have given my thoughtful consideration to the arguments advanced at Bar and have gone through the documents placed on record.

It is the firm opinion of this Court that the moment the procurement entity realised that the petitionerâ??s tender form was deficient on account of

non-uploading of the Form-7, the petitionerâ??s bid should have been declared non-responsive. Strictly speaking, the respondents should not have

given the petitioner an opportunity to furnish the hardcopy of the form offline. Probably this was done as only two bids were received and the rejection

of one might have frustrated the tender process completely. Be that as it may. The hardcopy was sought for and was furnished and on evaluation

thereof, it was manifested that the petitioner had changed the format of the Form-7 at point No.6 i.e. â??other chargesâ?? which was intentionally

altered to â??discountâ?? which was quantified at Rs.1200. Manifestly, this was done to bring the petitionerâ??s gross rate below what was offered

by the respondent No.4 because by the time, the petitioner submitted the offline Form-7, the financial bids had already been opened. The respondents

No.3 objectively considered this aspect in the notesheet dated 17.03.2017 at point NO.176 and 177 and 178 and decided to award the contract to the

sole remaining qualified bidder i.e. the respondent No.4. Manifestly, the action of the respondents in rejecting the petitionerâ??s bid in view of these

glaring facts is absolutely justified and cannot be challenged. However, the issue remains as to whether, the respondents were justified in forfeiting the

petitionerâ??s bid security. It is the opinion of this Court that the petitionerâ??s bid should have been disqualified at the techno qualification stage

because the tender document furnished by it, was deficient on the aspect of Form-7 i.e. break up of price bid. Had the bid been rejected at that stage,

obviously, the petitioner would have escaped the consequence of forfeiture of bid security as per Clause No.3.18(ii) of the tender document/

conditions.

In view of the discussion made herein above, while upholding the impugned order/ action of the respondents in rejecting the petitionerâ??s tender/ bid

vide letters/ communications dated 27.04.2017 and 08.05.2017 and granting the work order to the respondent No.4 M/s. Solar Industries India Limited,

the direction to forfeit the petitionerâ??s bid security is quashed and set aside. The respondents shall refund the bid security of the petitioner within a

period of 30 days from today.

The writ petition as well as stay application are disposed of with the above direction. No order as to costs.

