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**(2011) 05 GUJ CK 0056**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 5766 of 2011

Sonpal Export Pvt Ltd.

APPELLANT

Vs

Gujarat State Road Transport Corporation and Another

RESPONDENT

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**Date of Decision :** 05-05-2011

**Acts Referred:**

**Citation :** (2011) 05 GUJ CK 0056

**Hon'ble Judges :** V.M. Sahai, J;G.B. Shah, J

**Bench :** Division Bench

**Advocate :** Jitendra Malkan and K.V. Malkan, for the Appellant; None, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

V.M. Sahai, J.—We have heard learned Counsel Mr. Jitendra Malkan holding brief of Ms. K.V. Malkan for the Petitioners.

2. This petition has been filed challenging the contract awarded by the Respondent No. 1 Corporation in favour of Respondent No. 2.

3. The Respondent No. 1 issued a tender notice inviting online tender (E-tender). The last date for submission of tender was 01.03.2011 till 15.00 hours. The Petitioner, Respondent No. 2 and one more bidder, namely, Ajanta Transport Company applied for the tender. The upset value fixed by the Respondent No. 1 for the tender was Rs. 21.50 Crores. The bid of Ajanta Transport Company was for Rs. 18,06,66,666/-. Since it was below the upset value, therefore, the offer of Ajanta Transport Company was outrightly rejected. Thereafter, only two bidders remained, the Petitioner and the Respondent No. 2. The Petitioner has submitted a bid of Rs. 21,74,00,000/- whereas Respondent No. 2 has submitted the bid amount of Rs. 21,50,01,000/-.

4. In view of condition No. 13.2 of the terms and conditions of the tender, the Respondent No. 1 Corporation had prepared a break-up upset value for a period of five years. The tenderers were required to submit break-up of the amount to

be deposited by them by giving year-wise break-up for five years as the tender was for a period of five years. The Petitioner and Respondent No. 2 both submitted their year-wise break-up for five years and it was found by Respondent No. 1 that the amount offered by the Petitioner as well as Respondent No. 2 for the first year was below the upset value of break-up. Therefore, the Respondent No. 1 invited the Petitioner as well as Respondent No. 2 to resubmit their revised offers giving break-up for five years in accordance with upset value fixed for a period of five years. The Petitioner and Respondent No. 2 both submitted their revised offers. But the revised offers demonstrate that against the upset value of the first year of Rs. 3,52,16,000/-, the Petitioner submitted an offer amount of Rs. 2,44,00,000/- whereas the Respondent No. 2 has submitted the offer amount of Rs. 3,52,66,647/-.

5. Learned Counsel for the Petitioner has vehemently urged that in view of condition No. 13.2, the offer of the first year amount should be exceed in the second year by 10% and third year again 10% increase and this 10% increase in the offer amount has to be made continuously for a period of five years. However, the offer of Respondent No. 2 does not indicate that in each of the years, 10% increase had been shown. He further stated that the tender of Respondent No. 2 is in the process of acceptance by the Respondent No. 1.

6. The Respondent No. 1 the Corporation itself has fixed the upset value for each of the five years and the offer amount of the Respondent No. 2 was above the upset value fixed by the Respondent No. 1. Therefore, the Respondent No. 1 themselves have diluted condition No. 13.2 and has asked the tenderers to submit the offer amount for each of the five years by fixing an upset value above the break-up. Since the offer of Respondent No. 2 is found by us to be above the upset price fixed by Respondent No. 1 Corporation, we do not find any illegality has been committed by Respondent No. 1 in proceeding to accept the offer of Respondent No. 2.

7. In any event, the offered amount by the Petitioner for the first year was below the upset price fixed by the Respondent No. 1 Corporation. Therefore, the Petitioner could not be awarded the contract by the Respondent No. 1.

8. For the aforesaid reason, we do not find any merit in this petition. This writ petition fails and is accordingly dismissed.