(2013) 02 DEL CK 0323

In the Delhi High Court

Case No : W.P. (C) No. 1024 of 2013 and CM No. 1951 of 2013 (Stay)

U. Prints APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Citation : (2014) 305 ELT 61

Hon'ble Judges : Sanjay Kishan Kaul, J;Indermeet Kaur, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

1. The petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking to assail the decision of R-2/Commissioner of Customs dated 4-2-2013 alleged to be a rejection of the bid of the petitioner for certain lots in the auction held by R-3/Container Corporation of India on 30-8-2012. The consequential relief of release of goods has also been sought. It is the say of the petitioner that the bid made by the petitioner had been approved for the lots in question by R-3 subject to final approval of R-2 and the petitioner had already deposited the sum of Rs. 64,50,000/-.

2. The rejection of the bid has occurred without assigning any reasons for the same though the bid had been provisionally approved as far back as on 20-9-2012, the rejection has been made only on 4-2-2013 and the next auction scheduled for 13-2-2013.

3. The counter affidavit has been filed only of R-2. We have perused the contents of the same as also heard submissions of learned counsel for the parties. There are some glaring facts which emerged from the aforesaid. We may notice that there is a huge problem of containers lying with R-3 on account of delay in disposal of the goods which are either abandoned or seized. Petitions were filed before us by the owners of the containers qua this issue and directions have been issued to see how to expedite the process so that the containers are made

available for release of the containers to the owners. Despite this position, in our view, a very ham-handed approach is being adopted qua the auctions as would be set out by us hereinafter.

4. We are informed by the counter affidavit of R-2 that the first auction was held on 28/29-3-2012 by R-3 with a reserve price of Rs. 2.30 crores for all ten containers and the highest bid received was of Rs. 1.939 cores. The bid was rejected as it was below the reserve price and a second auction was held on 30-4-2012, but this time by reducing the reserve price by 10% to a sum of Rs. 2,18,40,000/-. In this bid, the highest offer received was from M/s. Trade Link Impex for a bid of Rs. 3,21,53,330/-, which was higher than the previous bid and also much higher than the early reserve price, leave aside the present reserve price. Not only that, the second highest bid of M/s. ARS Impex (at whose behest a complaint was made to R-2, which is alleged to have resulted in cancellation of the auction in question) was of Rs. 3,21,48,330/- i.e. only less by a sum of Rs. 5,000/-. The highest bidder, after depositing the Caution Money Deposit (CMD), failed to deposit the requisite Earnest Money Deposit (HMD) of 30% after confirmation of the bid in the e-auction. The CMD was thus forfeited but the bid was not offered to the second highest bidder. It has been stated by R-3 that apparently as per the CVC guidelines, re-auction has to take place even in such a situation, an aspect which would require closer scrutiny. In fact, after we noticed this aspect, a different plea is sought to be raised before us that the CVC guidelines prohibit a negotiation with H-2.

5. A third auction was held on 19-7-2012 with a further 10% lower reserve price of Rs. 1,94,40,000/-. R-3 was expected to answer as to why there should have been a 10% lowering of the reserve price when the reason the bid failed was not that it was below the reserve price, but that the requisite EMD was not deposited. In fact, the bid made was much higher than the reserve price even maintained on the first bid. Once again, the highest bid received was much higher than Rs. 3,70,91,000/- which was accepted but again the EMD was not deposited and CMD was forfeited. This resulted in the fourth auction on 30-8-2012 when the reserve price was further brought down to Rs. 1,92,00,000/- and the highest bid received was of the petitioner of Rs. 2,13,14,650/-, which was recommended for acceptance by the auction committee, but the opinion of R-2 was to the contrary.

6. The first aspect which we fail to appreciate is the lowering of the reserve price when the reason for the failure of the auction was not that the bid received was below the reserve price, but on account of non-deposit of EMD. In such a situation, we are of the view that there can be hardly any reason for lowering the reserve price.

7. We would also like both R-2 and R-3 to examine the issue whether really there is any CVC guideline which prohibits the offer being made to H-2 on account of failure of H-1 to deposit the EMD. This is not a case of negotiation of the price which is the restriction placed as per the CVC guideline i.e. if negotiation has to

take place it has to only take place with H-1. This is a situation where H-1 failed to honour his bid and thus the question arose as to whether H-2''s bid can be considered as valid.

8. We may note, however, in the facts of the present case the submission is that the H-2 M/s. ARS Impex had withdrawn its EMD and made a complaint only qua the fourth bid on account of the process which had been carried out on the second bid.

9. The counter affidavit of R-2 also notices the nature of complaint made by M/s. ARS Impex. The complaint emanated from clause 11(xiii) of the terms and conditions of the auction held on 30-4-2012 which provided that if the highest bidder fails to take the delivery within the stipulated time, after submission of the EMD, the goods should be delivered to the next highest bidder. This clause would not apply for the reason that in the present case, the EMD itself was not submitted. However, we have noticed this fact for the purpose that if the offer can be made to H-2 on account of non-delivery post deposit of EMD, then we see no reason why a similar practice should not be followed qua H-2 when the EMD itself had not been deposited.

10. Another complaint made was qua the requirement of different tenders being submitted under separate envelopes containing EMD and the tender for each lot while in the present case, the petitioner apparently had submitted all the offers in one envelope. However, it is not an issue that these were sealed envelopes.

11. The other relevant aspect arising from the counter affidavit is that as per R-2, it called for comments from R-3, which were in favour of the petitioner. R-2 also sought a clarification arising from what it perceived to be a deceptive advertisement issued. The advertisement referred to commodity as per available record as ''TEXTILE GOODS'', but the commodity as per physical examination was stated to be cables.

12. The position qua this is explained by learned counsel for R-3, on instructions, that where the column is ''Commodity as per available record'', it refers to the original declaration of the goods while under the column ''Commodity as per physical examination'' the goods as found are described.

13. We fail to see any reason for giving description of the goods as per import as prospective purchaser is not interested in a theoretical analysis of papers, but only what goods had to be bid for. No doubt, this can create an element of confusion as in the bold letters it is mentioned as ''TEXTILE GOODS'' while in the small print a description is given of the electrical goods under the heading ''Commodity as per physical examination''.

14. We call upon R-3 to stop this practice which is capable of causing deception to the prospective purchaser who is only interested in knowing what the goods are which are sought to be auctioned.

15. The last aspect which we need to note is that as per R-2 it has only an

advisory role for R-3. This position is not disputed by R-3 though it has rejected the bid of the petitioner ostensibly on the ground that it has not received the approval of R-2. It is the say of R-3 that there has to be a formal approval of the bid by R-2 and that is why the bid of the petitioner was rejected. The goods are not of a perishable nature.

16. In view of the aforesaid facts and circumstances, we are of the view that both R-2 and R-3 should interact and frame better guidelines for disposal of the goods which are not capable of causing any confusion and which achieve the purpose in view of our aforesaid observations. Needful be done within four weeks from today.

17. Insofar as the present case is concerned, we have already noticed the vast vacillation which has taken place in the price despite the goods not being perishable. No doubt, there has been inordinate delay in rejection of the bid of the petitioner. However, given the situation, it would be appropriate if the goods are put to proper auction post necessary remedial measures before they are sold off.

18. The amount deposited by the petitioner be returned by R-3 within one week from today subject to the petitioner providing requisite information as is sought for by R-3. The writ petition and the application stand disposed of.