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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6648/2021, CM APPL. 20918/2021

MS LAXMI AGENCY MIRA ENERGY RESOURCES PVT LTD

..... Petitioner

Through Mr. Rohit Rathi, Adv.

versus

ENERGY EFFICIENCY SERVICES LTD

..... Respondent

Through Mr. Samdarshi Sanjay, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

12.08.2021

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1. Aggrieved by the rejection of the petitioner's bid at the Technical Evaluation stage in response to the RfP in question, the present petition has been preferred. The respondents have filed their short affidavit disclosing the reasons for rejection of the petitioner's Technical Bid.

2. At this stage we may observe that the petitioner is a JV of the proprietorship firm namely, M/s Laxmi Agency and a private limited company namely, M/s Mira Energy Resources Pvt Ltd. The respondents have relied upon Section 2 Clause 4 of the Instructions to Bidders in their short affidavit which defined the expression "*bidder/tenderer*" to mean the bidding companies submitting the bids. Any reference to the bidder includes

bidding company, including its successors, executors and permitted assigns jointly and severally, as the context may require. Clause 6 states that the “*bidding company*” shall refer to such single/consortium company that has submitted the bid in accordance with the provisions of the bid.

3. The respondent further states that in the current context, the Joint Venture includes any Joint Venture Company registered under the Companies Act,1956 and any consortium formed amongst two or more parties. The respondents have also preferred to rely upon namely, Amendment No.2, dated 10.02.2021 with the RfP. This amendment stipulates that the annual Average Turnover (ATO) criteria shall be as follows:

“Duly authorized copy of audited annual report/balance sheet for any three consecutive financial years out of last four years i.e., 2016-17, 2017-18, 2018-19,2019-20 is to be submitted by respondent along with CA certificate. In case of proprietorship, ITR along with management signed accounts to be submitted if audited is not required. ATO means revenue from operations. Profitability means profit after tax.”

4. The present case as noticed above, is that, M/s Laxmi Agency is a proprietorship concern. M/s Laxmi Agency submitted its annual turnover figures for four financial years i.e. 2016-17, 2017-18, 2018-19 and 2019-20. As per the aforesaid clause, it is the audited annual report/balance-sheet of three consecutive financial years of the last four years i.e. 2016-17, 2017-18, 2018-19 and 2019-20 which would be considered. The petitioner’s claim

that so far as M/s Laxmi Agency is concerned, it meets the ATO criteria if its annual reports/balance-sheet for the years 2016-17, 2017-18 and 2018-19 are considered.

5. The respondents have also disclosed that so far as the JV partner M/s Mira Energy Resources is concerned, it submitted its annual return only for three consecutive years i.e. 2017-18, 2018-19 and 2019-20.

6. The respondents therefore, considered the annual returns of the proprietorship concerned i.e. M/s Laxmi Agency also for the same years and the admitted position is that if the annual report for 2016-17 of M/s Laxmi Agency is not considered, it does not fulfil the average annual turnover requirement.

7. The submission of Mr. Rathi, learned Counsel for the petitioner is that since the tender conditions are silent, and the M/s Laxmi Agency is a proprietorship concern, the petitioner is entitled to claim that so far as the ATO of M/s Laxmi Agency is concerned, the same should be computed for the 3 financial years i.e. 2016-17, 2017-18 and 2018-19.

8. He submits that in respect of the JV partner i.e. M/s Mira Energy Resources, the annual turnover for the years 2017-18, 2018-19 and 2019-20 have been submitted and the same should be considered.

9. We do not find merit in this submission of Mr. Rathi for the reason, that the bid has been made by the joint venture, and the joint venture between M/s Laxmi Agency and M/s Mira Energy Resources is treated as a single entity for the purposes of consideration of the bid. Therefore, it is the

annual turnover for the same financial years which the respondents would be entitled to consider. This methodology and approach adopted by the respondent, in our view, is completely reasonable.

10. We, therefore, do not find any reason to interfere with the decision making process of the respondent.

11. The petition is accordingly dismissed.

VIPIN SANGHI, J

JASMEET SINGH, J

AUGUST 12, 2021/dm