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irb Infrastructure Developers Limited Vs. Punjab Infrastructure Development Board and Another

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Court : Punjab and Haryana

Decided On : Aug-05-2014

Appellant : irb Infrastructure Developers Limited

Respondent : Punjab Infrastructure Development Board and Another

Judgement :

CWP No.15434 of 2014 1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CWP No.15434 of 2014 (O&M) Date of decision: August 5, 2014 IRB Infrastructure Developers Limited ...Petitioner Versus Punjab Infrastructure Development Board and another ...Respondents CORAM:- HON'BLE MR. JUSTICE K. KANNAN1 Whether Reporters of local papers may be allowed to see the judgment ?.

2. To be referred to the Reporters or not ?.

3. Whether the judgment should be reported in the Digest?. Present: Ms. Jaishree Thakur, Advocate, for the petitioner. K. KANNAN, J.

(Oral) 1. The dispute arises in a case where the petitioner has paid a bid security amount of `50 lakhs assured through a bank guarantee and later substituted through a bank draft for the same amount when the petitioner had participated in a proposal for development and modernization of computerized inter state check

posts on DBOT basis. The request for proposal has later gave place only to a decision by the respondents to disqualify the petitioner and the bid security amount, which was collected from the petitioner, has not been returned in terms of the terms and conditions set forth in the Request For Proposal (RFP) May 2011. The petitioner would rely on clause 19.6 of REP that allows for claiming return Singh Prem 2014.08.07 10:50 I attest to the accuracy and integrity of this document Chandigarh CWP No.15434 of 2014 2 of the bid security if the bids are rejected on the basis of evaluation of the contents of envelop 'A' in accordance with the provision of the documents.

2. I find in this case that the rejection of the proposal that has entailed is not really through a circumstance which clause 19.6 contemplates. There is yet another provision under clause 16 which sets out in paragraphs 16.1 to 16.5.9 different circumstances when a disqualification could result and a rejection of the proposal could be made. Clause 16.5.5 states that if a bidder has a conflict of interest, inter-alia, with other disqualifying factors, the proposal could be rejected. Clause 16.7 states that in the event of any bidder being disqualified under Clause 16.5, it shall not be required to disclose the reason for such disqualification and shall have a right to appropriate the bid security. A bank guarantee which is being given itself sets out that the guarantee is by way of unconditional and irrevocable terms and the acceptance of a bidder to all the terms of RP documents as unconditional. The petitioner has engaged the respondents in communications for return of the sum and has paraphrased the respondents' own stand in some of the communications that includes reference to the stand taken by the petitioner that there had been conflict of interest of the petitioner's bid with yet another bidder but the petitioner has attempted to explain that the other bidder was only a share-holder in the petitioner's company but not involved in day to day operation of the company. I have already pointed out that clause 16.5 which contemplates a conflict of interest as circumstance for rejection of the bid would allow for retention of the bid security amount in the event of a disqualification of the bidder. Singh Prem 2014.08.07 10:50 I attest to the accuracy and integrity of this document Chandigarh CWP No.15434 of 2014 3 3. The issue of whether there exists a conflict of interest or not and whether clause 16.7 could be invoked and the amount forfeited or whether the rejection had been other circumstances provided under other clause 19.6 that

could qualify for refund may not subject themselves for a summary consideration but might require evidence. I do not think the petitioner has a prima case to sustain a claim for refund. The petition is dismissed. The petitioner may adopt any other efficacious remedy where detailed consideration of the nature of termination and entitlement of refund could be set forth.

4. The writ petition is dismissed but with above observations.

5. August 5, 2014 (K.KANNAN) prem JUDGE Singh Prem 2014.08.07 10:50 I attest to the accuracy and integrity of this document Chandigarh

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