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29.12.
2023
Ct. No.07

WPA 27359 of 2023

**Surya Alloy Industries Ltd. & Anr.
Vs
Union of India & Ors.**

**Mr. Soumya Majumder
Mr. Farhan Gaffar
Mr. Shounak Mukhopadhyay
Mr. Kallol Saha
Mr. Akash Ghosh
Ms. M. Roy
.....For the Petitioners**

**Mr. Kumar Jyoti Tewari
Mr. Amrit Sinha
.....For the Respondents**

Affidavit of service filed in court today is taken on record.

On the prayer of Mr. Soumya Majumder, learned counsel appearing for the petitioners, leave is granted to the petitioners to file a supplementary affidavit affirmed on December 11, 2023. Copy has already been served upon Mr. Kumar Jyoti Tewari, learned counsel appearing for the respondents.

The writ petitioners claim to be the L1 bidder in respect of a bulk order supply under the subject tender process. The petitioners though claiming to be L1 bidder but were not allowed to participate in the reverse auction on the plea that another participant in the subject tender process has a direct nexus or

relation with these petitioners and accordingly, the participation of the petitioners, according to the tendering authority, is barred under the Competition Act, 2002 (For short “2002 Act”). Such action on the part of the tendering authority that is the Railways is impugned in this writ petition.

Mr. Soumya Majumder, learned counsel appearing for the petitioners submits that the ground on which the petitioners were not allowed to participate in the reverse auction process is totally contrary to the stand already taken by the Railways as while accepting the offer of the petitioners, the Railways mentioned that there is no sister concern, as would be evident from the document at page 9 of the supplementary affidavit. Hence, the plea for not allowing the petitioners to participate in the reverse auction process is totally illegal and arbitrary on the part of the Railways.

Mr. Kumar Jyoti Tewari, learned counsel appearing for the respondents, on instruction received in court from his client who is present in court, submits that though the process for finalizing the tender process is on, it may take some more time and shall not be finalized within next seven days.

Considering the submissions made on behalf of the parties and considering the materials on record, this court is of the view that to subserve

justice, the decision of the Railways not allowing the petitioners to participate in the reverse auction process shall be revisited once again upon granting an opportunity of hearing to the petitioners through its authorized representative and accordingly the decision of the Railways dated December 8, 2023 at page 7 of the supplementary affidavit stands set aside and quashed.

The respondent no.4 shall revisit the issue after granting an opportunity of hearing to the petitioners through its authorized representative on January 02, 2024 at its Office at Bhubaneswar, Orissa and the hearing shall commence sharp at 2 p.m., as agreed by the parties.

It is made clear that this court has not gone into the merits of the claim of the petitioners in any manner and the petitioners and the Railways shall be at liberty to raise whatever points they wish to raise by relying upon whatever records and documents they wish to rely upon before the respondent no.4. The respondent no.4 then shall conclude the hearing and pass its reasoned order within the seven working days from January 02, 2024. The reasoned order shall also be communicated to the petitioner within 24 hours from the date of the said reasoned order to be passed.

As submitted on behalf of the Railways until

this reasoned order is communicated to the petitioners, the Railways shall not take any further step to finalize the subject tender process.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

On the above terms, this writ petition being WPA 27359 of 2023 stands disposed of with no order as to costs.

(Aniruddha Roy, J.)