

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 1378 of 2020

Plaintiff : M/s Meerwani & Brothers,
through Mrs. Soofia Saeed Shah and Mr. Umer
Sikandar, advocates.

Defendant No. 1 : Province of Sindh (Nemo)

Defendant No. 2 : Karachi Water & Sewerage Board,
Through M/s. Zia-ul-Haq Makhdoom &
Abdullah Nizamani, advocates

Defendant No. 3 : Sindh Public Procurement Regulatory Authority
through Mr. Qamar Zaman Shah, Assistant
Director (Legal) SPPRA

Date of Hearing : -----
09.11.2020.
Date of order : 09.11.2020.

ORDER

ZAFAR AHMED RAJPUT, J: - By this order, I intend to dispose of C.M.A. No. 9688 of 2020 filed on behalf of the plaintiff, under Order XXXIX, rule 1 & 2 read with Section 151 C.P.C., seeking an interim injunctive order restraining the defendant No. 2 from finalizing bid/auction process for awarding contract under the terms mentioned in the addendum, dated 15th July, 2020.

2. Learned counsel for the plaintiff has contended that the plaintiff (M/s Meerwani & Brothers), who is a Government contractor and having sufficient experience in execution of civil works, while responding to the advertisement, dated 30th June, 2020 published by the defendant No. 2 (Karachi Water & Sewerage Board) in various newspapers, obtained the tender documents of auction of six water hydrants bearing tender opening date as 21st July, 2020 and subsequently the defendant No. 2 held pre-bid meeting on 9th July, 2020 and then on 15th July, 2020, it issued addendum, whereby it made various amendments in the tender documents, which have rendered the plaintiff disqualified. She while referring the tender documents and addendum (*Annexures "P/6" and "P/3" available at pages 35 to 151 and 27, respectively*) has further contended that the tender documents provide for a Joint Venture of three (3) firms while the addendum provides for Joint Venture of only two (2) firms; the security amount was reduced in addendum from 5% to 2%; tender

documents provide for 50 vehicles owned by the firm while addendum provides not less than 60 vehicles, as such, the alleged addendum has been issued by the defendant No. 2 to disqualify the plaintiff and other contractors from taking part in the auction process in order to give favour to blue eyed contestants; hence, the plaintiff has filed the instant suit for declaration, mandatory and permanent injunction, award of contract and recovery of damages. She has also contended that the plaintiff has made out a prima facie good case in its favour and the balance of convenience also lies in its favour and it will suffer irreparable loss, if the interim order is not granted to it.

3. On the other hand, learned counsel for the defendant No. 2 while opposing this application has maintained that in this matter the tender was published in the newspaper on 30th June, 2020 and admittedly a pre-bid meeting was called by the defendant No. 2 on 9th July, 2020, which was also attended by the plaintiff and thereafter subject addendum was published in the newspapers on 15th July, 2020; however, the plaintiff did not raise any objection with regard to the alleged amendments made in the conditions of the tender in the pre-bid meeting and even the plaintiff in its letter dated 20th July, 2020 addressed to the defendant No. 2 (*Annexure "P/9" at page 159 with the memo of plaint*) did not raise any objection with regard to the alleged addendum, which have been agitated by it in the instant suit and thereafter the tender was open on 21st July, 2020; however, after 71 days of the opening of the tender the plaintiff filed this suit for ulterior motives in order to deprive the lawful bidder from awarding the contract. He has further maintained that the plaintiff has failed to establish even from its pleadings that it was ever ready to apply for the alleged contract under the tender. He has further maintained that except the condition for the contractor of having atleast 60 vehicles, all the other conditions mentioned in the addendum were not on the higher side but to lower side facilitating all the contractors having intention of taking part in the alleged bid while condition of 60 vehicles was already mentioned at various places in the tender documents but mistakenly at one place it was mentioned as 50 in number; therefore, addendum was issued. He has also maintained that the plaintiff has failed to make out a prima facie case in its favour and the balance of convenience does not lie in its favour but it lies in favour of defendant No. 2, who will suffer irreparable loss, if the interim injunction is granted to the plaintiff.

4. I have heard learned counsel for the parties and perused the material available on record with their assistance.

5. It is an admitted position that after advertisement of the alleged tender, the plaintiff participated in the pre-bid meeting held on 9th July, 2020; however, he did not raise any objection with regard to proposed addendum. It may be observed that under Rule 46(3)(iv) of Sindh Public Procurement Rules, 2010, *“procuring agency may revise, delete, modify or add any aspect of the technical requirements or evaluation criteria, or it may add new requirements or criteria not inconsistent with these rules; provided that such revisions, deletions, modifications or additions are communicated to all the bidders equally at the time of invitation to submit final bids, and that sufficient time is allowed to the bidders to prepare their revised bids”*. It is also an admitted position that the alleged addendum was issued before the submission of bid documents and; thus, the plaintiff had sufficient time to prepare its bid. So far the conditions added in the addendum are concerned, it is an admitted position that through addendum some of the conditions of the tender documents were relaxed in favour of all the bidders except one pertaining to the requirement of 60 vehicles to be owned by the firm/proprietor intending to take part in the auction process. It appears from the perusal of tender documents that it was pre-requisite under Clause 3.1 of the tender that the prospective bidder should have minimum fleet of 60 tankers of specified capacity of its own and at its full disposal so as to supply maximum quantity of 1,620,000 gallons per day of the water, while under Clause 7.1 of the tender documents it was required that the bidder should own minimum 60 water tankers fleet and in case of Joint Venture/bidder should have valid Joint Venture Agreement, clearly fleet the lead firm/proprietor with JV agreement; hence, the condition of 60 vehicles in the addendum appears to be in consonance with the tender documents. It also appears that on 20th July, 2020 the plaintiff wrote a letter to defendant No. 2, whereby it got certain observations registered with a request to extend the bid submission date alongwith corrigendum; however, none of the objections raised by the plaintiff in the instant suit appear as part of its objections in the said letter, meaning thereby the plaintiff itself did not feel aggrieved by the addendum till 20th July, 2020 and it is also an admitted position that the plaintiff did not submit bid documents on the required date; however, after laps of 71 days he filed the instant suit challenging the said addendum. It may be observed here that admittedly the plaintiff never filed any complaint before the Complaint Redressal Committee in terms of Section 31(3) of the Sindh Public Procurement Rules, 2010, which provides mechanism for the redressal of the grievances; hence, the plaintiff failed to avail the remedy available to it for the redressal of its grievances. It is well settled principle of jurisprudence that delay defeats equity and that equity aids the vigilant and not the indolent.

6. For the forgoing facts and reasons, I am of the considered view that the plaintiff has failed to make out prima facie case in its favour for the grant of interim order and the balance of convenience, which is infact balance of inconvenience does not lie in favour of the plaintiff but in favour of defendant No. 2 as in case interim injunction is granted to the plaintiff, it will cause inconvenience to the defendant No. 2 to execute the work under tender within the stipulated period and it is the defendant No. 2 indeed who would suffer irreparable loss, as the process of tender will linger on and ultimately general public will suffer for want of services under the alleged contract. Hence, the instant application is dismissed being devoid of merit.

9. Above are the reasons of my short order dated 09.11.2020.

Athar Zai

JUDGE