

Court No. - 1

Case :- WRIT - C No. - 29072 of 2019

Petitioner :- Ncc Limited

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Sudeep Harkauli

Counsel for Respondent :- C.S.C.,Mahboob Ahmad

Hon'ble Ramesh Sinha,J.

Hon'ble Ajit Kumar,J.

Heard Sri Anoop Trivedi , learned Senior Advocate assisted by Sri Sudeep Harkauli, learned counsel for the petitioner and Sri Ravi Anand Agarwal, learned Advocate appearing for respondents no. 2 and 3 and Dr. D.K. Tiwari, learned Standing Counsel.

The contention advanced by learned Senior Advocate appearing for the petitioner that while passing the impugned order dated 9th September, 2019, rejecting the technical bid of the petitioner, no proper technical assesment has taken place as per the instructions 32.2, 32.3 read with 32.4 of Section 1 of the Instructions to Bidders (ITB) and he submits that the petitioner's having submitted details of litigation that were in fact instituted at the instance of the petitioner except the one in which there was a counter claim at item no. 9 of the list, if the Technical Evaluation Committee had rendered its due application of mind, it would not have found the technical bid to be substantially non responsive to non-suit the petitioner. He submits that if the arbitration proceedings instituted at the instance of the firm are for realization of money then in such circumstances such litigation cannot be taken to be slashing net worth of the company. He

argues that it is a claim against the company that creates charge upon the assets if such claim is allowed but it is not the case in hand.

The argument advanced *prima facie* appears to have substance.

Sri Ravi Anand Agarwal, learned Advocate, appearing for the contesting respondents no. 2 and 3 submits that opening of the financial bid has been deferred and he may be granted a very short time to have instruction in the matter.

In view of the above, let the matter be placed again on 25.9.2019 in the Additional Cause List on the top of the board, however, it is provided that in the meanwhile the opening of the financial bid shall remain deferred.

Order Date :- 16.9.2019
Nadeem Ahmad

(Ajit Kumar,J.) (Ramesh Sinha,J.)