

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

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Date of decision: 24th March, 2015

W.P.(C) No.7498/2014 & CM No.17749/2014 (for stay)

**DELITE HI-TECH FURNITURE
INDUSTRIES PVT. LTD.**

..... Petitioner

Through: Mr. S.K. Sharma, Mr. Rahul Sharma, Mr. Archit Vasudev, Mr. Prayas Aneja and Mr. Puneet Relan, Advs.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Amit Mahajan, CGSC for UOI.
Mr. Arvind P. Datar, Sr. Adv. with Ms. Surekha Raman and Mr. Anuj Sharma, Advs. for R-3.

AND

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W.P.(C) No.7506/2014 & CM No.17760/2014 (for stay)

DELITE KOM LTD.

..... Petitioner

Through: Mr. S.K. Sharma, Mr. Rahul Sharma, Mr. Archit Vasudev, Mr. Prayas Aneja and Mr. Puneet Relan, Advs.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Amit Mahajan, CGSC for UOI.
Mr. Arvind P. Datar, Sr. Adv. with Ms. Surekha Raman and Mr. Anuj Sharma, Advs. for R-3.

AND

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W.P.(C) No.7510/2014 & CM No.17766/2014 (for stay)

ROYAL SAFE COMPANY (KB)

..... Petitioner

Through: Mr. S.K. Sharma, Mr. Rahul Sharma, Mr. Archit Vasudev, Mr. Prayas Aneja and Mr. Puneet Relan, Advs.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Amit Mahajan, CGSC for UOI.
Mr. Arvind P. Datar, Sr. Adv. with Ms. Surekha Raman and Mr. Anuj Sharma, Advs. for R-3.

CORAM :-
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
RAJIV SAHAI ENDLAW, J.

1. The challenge in these petitions is to the Tender Enquiry No. GIOF/HW-3/RC-H7010000/1214/43 dated 27th December, 2013 issued by the respondent no.2 Directorate General of Supplies & Disposals (DGS&D) and also to the consequent Rate Contract dated 1st January, 2014 / 28th January, 2014 entered into by the DGS&D with respondent no.3 Godrej and Boyce Manufacturing Co. Ltd. (Godrej) for supply of Godrej Interio Office Furniture. The said Tender Enquiry was as under:-

S. No.	TENDER ENQUIRY NO.	DESCRIPTION OF STORES	DTE.	DUE TO OPEN & TIME	PRICE OF TENDER SET
2.	GIOF/HW-3/RC-H7010000/1214/43	1. Jefferson Presidential Suite. 2. Viva 3. Elan Veneer Desk 4. Elan Veneer ERU 5. Elan Veneer Credenza 6. Elan Laminate Main Desk 7. Elan Laminate ERU 8. Elan Laminate Credenza 9. WT Series 10. Unitised Tables 11. Encarta Conference Table 12. Greenguard Certified Scholar 13. Regency Series 14. Kubix series 15. Economy Executive Chairs 16. 7031/7032 17. Classic Range 18. Storage Range 19. Optimizer with 381 depth 20. Optimizer with 457 depth 21. Smart Opos Modules 22. Halo Series	HW	27.12.2013 03:00 PM	Rs.5000

2. It is the contention of the petitioners:- (i) that majority of the items mentioned in the said Tender Enquiry were reserved for Micro, Small & Medium Enterprises / Small Scale Industries sector and were vide Note dated 16th December, 2013 i.e. shortly before the aforesaid Tender Enquiry, taken out

of the reserved category leaving only six items in the reserved category; furniture items however continue to remain reserved for Small Scale Industries (SSI) and the aforesaid Tender Enquiry in so far as qua furniture items is in violation of the DGS&D Manual; (ii) that the Note dated 16th December, 2013 was circulated to different departments of DGS&D only on 15th January, 2014 i.e. after the Tender Enquiry and after entering into the Rate Contract dated 1st January, 2014 with Godrej; (iii) that DGS&D, by including “GIOF” in the Tender Enquiry and which stands for “Godrej Interio Office Furniture” restricted the tender to only items of Godrej brand; (iv) the aforesaid was thus a single party tender and was floated on 27th December, 2013 with date and time of opening thereof at 1500 hours on the same day; (v) shortly thereafter, on 1st January, 2014, in pursuance thereto Rate Contract valid for 24 months with the provision for revision of price after 12 months was entered into with the respondent No.3 (and which was amended on 28th January, 2014); (vi) that the practice of calling such single brand quotations has repeatedly been deprecated by the various Government departments themselves; (vii) that most of the items mentioned in the Tender Enquiry aforesaid are furniture items manufactured by several well known companies and the Tender Enquiry specifying the brand was floated to favour Godrej; and, (viii) award of single party Rate Contract is

monopolistic, against public policy and against the basic principles of transparency.

The petitions were accompanied with an application for interim relief for restraining the respondents from making any purchase / supply under the Rate Contract aforesaid.

3. Notice of the petitions as well as applications for interim relief was issued. Counter affidavits have been filed on behalf of Union of India (UOI) / DGS&D as well as by Godrej. Rejoinders thereto have been filed by the petitioners. We heard the counsel for the petitioners, learned ASG for UOI / DGS&D and the senior counsel for the respondent no.3 and reserved judgment.

4. It is the defence of the UOI / DGS&D, (i) Rate Contract is an agreement to supply stores at specified price during the period thereof; no quantities are mentioned in the Rate Contract and there is no obligation to purchase any minimum quantity; it is in the nature of standing offer from the supplier and each supply order constitutes a separate contract, with the supplier being bound to supply at the rates specified in the contract; (ii) entering into Rate Contracts saves time and effort in tedious and frequent tendering at multiple user locations and enables buying as and when required; (iii) for most common user

items, Rate Contracts are concluded on the basis of competitive bidding based on common standard specifications and often Rate Contracts are concluded with many suppliers simultaneously; (iv) use of DGS&D Rate Contract is not mandatory for any Government department; it is entirely up to the user department to choose any of the Rate Contract holders to place supply order or to go for its own tendering for covering its requirement/demand; (v) that the Note dated 16th December, 2013 had no bearing on the conclusion of Rate Contract with Godrej and in any case the Note dated 16th December, 2013 stands withdrawn w.e.f. 12th September, 2014; (vi) that the indenters / user departments have full liberty to buy the product through DGS&D Rate Contract or through their own tender process; (vii) if any of the items in the subject Rate Contract is in Micro and Small Scale Sector, it is up to the user department to procure the same from such sector and DGS&D is not concerned therewith; (viii) that the policy of reservation even otherwise is applicable only to Central Government Departments and Ministries only; and, (ix) that office furnishing products of Godrej cannot be compared in terms of design, feature, performance and quality parameters with that of SSI firms' products.

UOI / DGS&D have not disputed that the Tender Enquiry was meant only for products manufactured by Godrej.

5. Godrej in its counter affidavit has pleaded, (i) that the petitioners were well aware of the tender and the Rate Contract in January, 2014 but did not protest and have belatedly filed writ petitions in or about October / November, 2014 only; the petitions are thus highly belated; (ii) that it is open to the petitioners also to approach DGS&D for such a Rate Contract; (iii) that the Rate Contract awarded to Godrej being a catalogue price Rate Contract, there was no requirement for following the process of tendering and issue of Tender Enquiry; and, (iv) the whole purpose of a catalogue based Rate Contract is to eliminate the procedural delays and technicalities which hinder the various Government departments from obtaining such quality products as it is difficult for the user to differentiate between products due to unique manufacturing process / material being used by each manufacturer and the time consuming tendering process resulting in delay in procurement of products and delay in execution of projects and overall loss to the Government.

6. Need is not felt to refer to the rejoinders filed by the petitioners as neither counsels referred thereto.

7. The counsel for the petitioners, (i) contended that rate contracts for specific brand can be entered into with respect to spare or ancillary items required from time to time of products/items/goods/stores already purchased

through Tender Enquiry, to obviate the tender process for such spare / ancillary, requirement whereof may arise from time to time; attention was invited to the Circular dated 13th November, 2013 providing *inter alia* for entering into Rate Contract on Net Dealer Price basis with respect to automobiles; (ii) invited attention to document dated 27th August, 2013 purporting to be Chapter 13A of DGS&D Manual *inter alia* providing that catalogue procurement is to be used for conclusion of Rate Contracts for such common user items where formulation of general / common or broad based specifications is not feasible for competitive bidding or design feature / performance parameters of such products differ significantly among the products of different manufacturers and even between different models of the same manufacturer and / or where equitable comparison of prices of such products is not feasible; it is contended that the Rate Contracts for Net Dealer Price cannot be entered into with respect to office furniture as has been done (we may notice that UOI / DGS&D have denied the said document); (iii) invited attention to Circular No.68 dated 12th September, 2014 of the DGS&D requesting the Purchase Directorate to ensure that items notified for exclusive purchase from Medium and Small Scale Sector Industries are procured accordingly and it is argued that all the items of the impugned Tender Enquiry are so reserved; (iv) handed over a copy of the

Gazette Notification dated 23rd March, 2012 listing the items reserved for purchase from Small Scale Industries/Units and contended that Steel Almirah, Steel Chair, Steel Desks, Steel Racks/Shelf, Steel Stools and Steel Trunks are included therein; and, (v) handed over a document titled “Chapter-6: Procurement of Goods and Services” of General Financial Rules, 2005 (GFR 2005), Rule 141 whereunder titled ‘Rate Contract’ provides that Rate Contracts with registered suppliers for goods and items of standard types which are identified as common user items and are needed on recurring basis by various Central Government Ministries or Departments shall be entered into and Rule 144 whereof again provides for items reserved for Small Scale Industries; Rule 154 thereunder provides that single Tender Enquiry shall be made only where a particular firm is the manufacturer of the required goods and in case of emergency the required goods are necessarily to be purchased from particular source and the reason for such decision is to be recorded and approval of Competent Authority obtained and for standardization of machinery or spare parts.

8. The learned ASG on behalf of UOI / DGS&D contended that, (i) merely because DGS&D has entered into the Rate Contract does not prevent the user department from still floating the tender and only if the user department, inspite

of having a tender at a rate lower than under the Rate Contract still buys under the Rate Contract it has to record the reasons therefor; (ii) on enquiry it was informed that no applications are invited for entering into Rate Contract; and, (iii) that of the tendered items, only Steel Almirah is in the Small Scale Sector.

9. The senior counsel for the Godrej also contended that it is open to the petitioners to also enter into the Rate Contracts. With liberty sought from us while reserving judgment, an additional affidavit has been filed annexing thereto copies of the tenders floated by various Government departments / institutions during the period 2014-15 for procurement of office furniture in spite of the Rate Contract with Godrej.

10. From our experience, of procurement of articles for the Courts, of the tendency to where ever a DGS&D Rate Contract exists, avoid the tedious process of inviting tenders, we during the hearing asked the learned ASG and the senior counsel for Godrej that whether not from the factum of DGS&D having entered into a Rate Contract with Godrej, there is likelihood of most of the user departments opting for Godrej items and thereby giving Godrej an advantage over the other manufacturers / suppliers of same items.

11. The only answer which was forthcoming was that the user departments are not bound to do so.

12. We had during the hearing further enquired from the learned ASG whether there is any document recording the decision for preferring Godrej brand only for the subject items or to standardize the said items in all the user departments.

13. No such document has been filed / was shown.

14. We, in the said state of affairs are intrigued as to why a Tender Enquiry open only to Godrej was floated and the Rate Contract entered into with Godrej. If the intent was to enter into a Rate Contract with Godrej, there was no need to float a Tender Enquiry; by specifying the brand of goods / items of Godrej in the said Enquiry, the floating of tender in which none else could participate, appears to be farcical. The explanation in the counter affidavit of UOI / DGS&D that it was done only to fulfill the requirement of online software is unacceptable. Rather, it has to be held that the online software also has been devised in accordance with the DGS&D Manual as discussed herein below. Further, if it was felt that the requirement of nearly all the user departments of the products / items / goods / stores subject matter of the said Tender Enquiry was a recurring one and did not call for each of the user departments separately floating tenders therefor, certainly opportunity to all manufacturers / suppliers of such items should have been given. Again, if it

was felt that all user departments should procure said products / items / goods / stores of Godrej brand only, a decision in writing giving reasons would have existed.

15. Though Godrej has with the additional affidavit aforesaid filed Notices Inviting Tenders for the said items which have been floated by various user departments inspite of the said Rate Contract but has shied from disclosing its sale figures under the Rate Contract. It is well nigh possible that the quantities for which tenders have still been floated are negligible vis-à-vis quantities purchased under the Rate Contract.

16. The petitioners are thus found to be correct in their contention that Godrej has been favoured and given an undue advantage by entering into a Rate Contract with it for items manufactured and supplied by a number of other suppliers and without any justification for preferring the Godrej brand. Once, open tendering has been emphasized, anything done to come in the way of said open tendering will necessarily invite suspicion. Though it was repeatedly contended that the petitioners are also free to enter into Rate Contracts with UOI / DGS&D but on our enquiry that in such an event which Rate Contract the user department is to prefer, again no answer was forthcoming. Thus, modus suggested also vests a discretion in the user department to prefer one

Rate Contract against another and which is the antithesis of policy and principle of open tendering.

17. All counsels had argued *de hors* the DGS&D Manual containing the policies and procedures adopted by the DGS&D for purchase. We asked the learned ASG to supply a copy thereof. A copy of the Manual effective from 1st October, 1999 was handed over. Clauses 3.1 and 3.2 thereof in Chapter 3 titled "Procurement Objective and Purchase Policy" are as under:

" 3.1 PROCUREMENT OBJECTIVE: The main objectives of public buying are :-

- (i) To procure stores of specified quantity and specified quality.*
- (ii) To procure stores on a competitive basis at the lowest reasonable price.*
- (iii) To procure stores with a planned timely delivery.*

3.2 PURCHASE POLICY: The purchase policy adopted in DGS&D procurement process is as per the guidelines of General Financial Rules (GFR) and the salient features of which are :

- (a) to make purchase of stores for public service in such a way as to encourage development of indigenous production of stores to the utmost possible extent.*
- (b) to provide price and or purchase preference upto specified limit as may be prescribed by the Government from time to time to the stores manufactured by Cottage and Small Scale Industries and Public Sector Undertakings over those manufactured by private large scale industries.*
- (c) to ensure quality of products and timely supplies."*

18. We further find that Chapter-13 of the said Manual relates to 'Rate Contracts' and Clauses 13.1.3, 13.2.1, 13.3, 13.8, 13.14.1, 13.14.2(c)(iii), 13.15, 13.16 and 13.28.1 thereof are as under:-

"13.1 DISTINCTIVE FEATURES:

.....

13.1.3 *The supply orders can be placed on any of the rate contract holding firm(s) either directly by the authorized officers of the indentors (known as Direct Demanding Officers) or by the DGS&D subject to such restrictions as are mentioned in the rate contract.*

13.2 STORES FOR WHICH RATE CONTRACTS TO BE CONCLUDED:

13.2.1 *The items which fulfil the following criteria are considered for rate contract;*

- a) Items of standard types preferably having BIS specifications.*
- b) Items which are identified as common user items and are needed on recurring basis.*
- c) Items for which prices are likely to be stable and not subject to considerable market fluctuations.*
- d) However, there are certain items which are common and in regular demand and are material intensive prices of which are subject to market price fluctuations. Rate contract for such items could be considered with provision of price variation to account for fluctuation of market rates of raw-material etc.*
- e) Items for which R/C is convenient to operate. For instance, in the case of items of low value and which are required by indentors in small quantities, rate contracts may not be convenient to operate.*

f) Items with an estimated annual drawals of Rs.25 lakhs or more.

g) As many items as possible should be on rate contract.

h) Rate Contract may not be concluded for the scarce/critical/short supply items.

13.3 AUTHORITY COMPETENT TO BRING/DELETE AN ITEM ON RATE CONTRACT

13.3.1 *The decision to bring or delete an item on / from rate contract will be taken by the Standing Review Committee (SRC) under the Chairmanship of DG(S&D) except for those items which were earlier brought on rate contract or deleted from the rate contract on the directions of Department of Supply. In all such cases subsequent decision to delete or bring an item on rate contract will be taken by the Standing Review Committee with the approval of Department of Supply.*

13.3.2 *The Committee associates representatives from major indenting departments like Defence, Railways, Home Affairs, Health, Telecommunications, State Governments and Trade organizations.*

13.3.3 *The above Standing Review Committee will be assisted by a Sub-Committee under the Chairmanship of ADG (Supplies) with Director (CDN) as Member-Secretary. The Sub Committee may co-opt representatives from major indentors and one representative from trade as members, if considered necessary.*

13.3.4 *The suggestions to bring new items on rate contract will be sent to /received by the Member-Secretary who will place them before the sub-committee for consideration. If the item is considered R/C – worthy by the Sub-Committee, it will be allotted to the Purchase Directorate.*

13.3.5 *The concerned Purchase Directorate will collect the data related to the suggested item for its compliance with the criteria prescribed for bringing the item on rate contract. They*

would interact with Quality Assurance Wing to finalize the specification for the item suggested.

13.3.6 Where it is considered necessary to consult the Industry/likely DDOs the Purchase Director concerned shall call for a meeting at the competent level with the trade/industry/likely DDOs associating the QA Wing.

13.3.7 In cases in which there exists slight divergence standard, efforts should be made to secure codification and standardization and when standardization has been effected, such stores should be recommended to be purchased on the basis of rate contracts.

13.3.8 The data so collected will be forwarded to the Member Secretary for perusal by the Sub-Committee. The Sub Committee will scrutinize the data to check whether the suggested item could be brought on rate contract and place its recommendations before the Standing Review Committee for its considerations and approval.

13.3.9 Once an item is approved by SRC, fresh approval of SRC is not required for each and every size/capacity of items to be brought on rate contract. Directorate may conclude rate contract as long as criteria are satisfied keeping in view the broad category of item already stands approved by SRC.

13.3.10 The Sub-Committee may meet once in a month to take a view on the items already projected and submit their report to DG. The Standing Review Committee may meet once in a quarter.

13.8 TENDER ENQUIRY PREPARATION AND ISSUE OF:

13.8.1 Regarding preparation of the tender enquiry, fixation of time and date for receipt, opening of tenders, time to be allowed to tenderers to quote publicity and issue of tender enquiry etc. the instructions contained in Chapter-8 will mutatis-mutandis apply and may be referred to.

13.14 PROPOSAL FOR CONCLUSION OF RATE CONTRACT :

13.14.1 The proposal for rate contract should be prefaced with a synopsis on production, demand and supply position of stores in question bringing out clearly the minimum number of firms required to be brought on parallel rate contract based on their capacity and the estimated annual requirements.

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13.14.2 The rate contract proposal/brief for TPC or TAC will essentially consist of details given in Annexure – 38. It should take into consideration;

.....

c) REASONABILITY OF PRICES PROPOSED TO BE ACCEPTED:

.....

iii) Parameters which are relevant to determine the reasonableness of the prices should be ascertained in advance so that at the time of opening of tenders the purchaser is in possession of all necessary information to make an appropriate evaluation of offers and thus, conclude rate contract in time at reasonable and justifiable prices.

13.15 CONCLUSION OF PARALLEL RATE CONTRACTS:

13.15.1 Proposals may be worked out for entering into parallel rate contracts with minimum number of firms, which in any case be not less than two by considering ;

(a) the capacity of the tendering firms

(b) the quantity committed against the existing Rate Contracts.

(c) The estimated annual requirement and

(d) Reasonable price range so as to include products of established and reputed manufacturers as also items

produced by different sectors so that Indenting Departments will have wider choice.

13.15.2 *The competent purchase officer on merits of each case can decide the number of firms to be awarded Rate Contracts for an item, so that Indenting Departments will have wider choice*

13.15.3 *Efforts should be made to conclude rate contracts with the firms located in different parts of the country.*

13.15.4 *The actual drawals of the rate contract though not routed through the DGS&D rate contracts, may be much more. On the assumption that drawals by all agencies will be twice the drawals of expired R/Cs and the firms may commit 50% of the assessed capacity for production of rate contract items, the annual drawal of rate contract may be taken as four times the actual drawals of the current rate contract.*

13.15.5 *Since the full capacity of the firms is not always available to meet the rate contract requirement, 50% of the firm's assessed capacity/proven capacity should be counted towards rate contract supplies and rest of the capacity may be presumed to be for non-rate contract supplies. The competent purchase officer may, therefore, go down upto 50% of the capacity/proven capacity if the circumstances so warrant.*

13.15.6 *Price range of 5% can be considered to be reasonable. However, the competent purchase officer may take a decision on merits of each case.*

13.16 NEGOTIATION/COUNTER OFFER :

13.16.1 *Post Tender Negotiations should be avoided and the rate contracts may be concluded without negotiations by following the guidelines given above for conclusion of parallel rate contracts with adequate number of firms at prices within reasonable range to meet the estimated drawals.*

13.16.2 *In cases where the price of L1 is considered acceptable, but there are not enough firms within the reasonable price range, R/C may be concluded with L1 and its*

price, counter offered to all other higher quoting firms. L1 may be informed of the action and be told that an opportunity is also being given to them to reduce the rate at which R/C has been awarded. All firms will be asked to send their response in sealed covers to be opened in public as per the target date and time fixed for reply. Those who accept the counter offered prices or below may be awarded parallel rate contracts to meet the estimated drawals.

13.16.3 *Where, however, the price of L1 is not acceptable, Purchase Directorate may in the first instance negotiate with L1 only for arriving at a reasonable/acceptable price. On successful conclusion of negotiations with L1, R/C may be awarded to the L1 at the agreed negotiated price and the same may be counter offered to all the other higher quoting firms and the parallel R/Cs concluded in the same manner as above.*

13.16.4 *If the negotiations with L1 is not successful, the price considered as reasonable may be counter offered to the higher quoting firms including L1.*

13.16.5 *In situations where new comers or firms with unfavourable reports happen to quote an unreasonably low price, such offers may not be ignored. However, if such offers are made, it may not be desirable to treat such offers as L1 for negotiations and the purchase directorate may decide the technically acceptable and reasonable L1 firm with the approval of the competent authority for the purpose of above exercise.*

13.28 ISSUE OF PARALLEL RATE CONTRACTS:

13.28.1 *As soon as the decision to award rate contract to more than one firm is taken, contracts should be issued to all the firms simultaneously and not on different dates. This would avoid adverse criticism from the trade against discrimination, favouritism and corruption. Where, however, decision to conclude parallel rate contract is taken on different dates, parallel rate contracts can be issued on different dates as and when decision is taken.”*

19. As would be obvious from the aforesaid, the procedure prescribed for entering into Rate Contract has not been followed.

I. The impugned Tender Enquiry and the Rate Contract are not in accordance with the Purchase Policy to procure stores on a competitive basis at the lowest reasonable price and as per the Guidelines of the General Financial Rules.

II. Without any decision, that the goods/stores tendered for, only of Godrej brand are the standard type and without identifying the Godrej brand of said goods as common user items needed on recurring basis or are otherwise identifying the goods/stores of Godrej brand within the meaning of Clause 13.2, for which only Rate Contracts can be concluded, the Rate Contract was concluded with Godrej.

III. Clause 13.1.3 supra contemplates entering into Rate Contract with all the eligible suppliers of the goods/stores for which Rate Contracts can be concluded. However no opportunity was given to any supplier other than Godrej for entering into the Rate Contract. Rather, by specifying the Godrej brand, the other suppliers were expressly excluded.

IV. No decision of the SRC, within the meaning of Clause 13.3, to bring the subject goods/stores within the list of items for which Rate Contracts can

be concluded has been shown. Clause 13.3 lays down the detailed procedure for bringing an item of goods/stores in the list of goods / stores for which Rate Contracts can be concluded. The said procedure has obviously not been followed.

V. Clause 13.8 requires the procedure prescribed in Chapter 8 of the Manual to be followed for Tenders for Rate Contracts also. Chapter 8 contemplates inviting Tenders from all manufacturers/suppliers of the goods/stores. Clause 8.2(c) thereof provides that the system of inviting Single Tender Enquiry is to be adopted in case of stores where it is to the knowledge of the purchaser that only a particular firm is the manufacturer of the store demanded or as per policy of Government, purchase is to be made only from selected firm. It has not been pleaded/shown that there is any policy to purchase the subject goods/stores only from Godrej. On the contrary, by contending that that the petitioners can also enter into Rate Contracts for the subject goods/stores, it has been expressly admitted that Godrej is not the only manufacturer/supplier of the subject goods/stores.

VI. Clause 13.14.1 contemplates drawing up of a proposal for Rate Contracts *inter alia* specifying the minimum number of firms required to be bought on parallel Rate Contract. No proposal, if any drawn up, has been

shown and no reason has been given why in the said proposal, if any, only Godrej was brought on Rate Contract.

VII. Clause 13.4.2(c)(iii) also requires ascertaining in advance of prices before the opening of tenders for Rate Contracts. No such ascertainment is pleaded to have been done.

VIII. Clause 13.15 again contemplates entering simultaneously into Rate Contracts with several manufacturers/suppliers. In contravention thereof, only Godrej was preferred for entering into the Rate Contract.

IX. Clause 13.16 again contemplates tenders for Rate Contracts to be open to all manufacturers/suppliers and Rate Contracts being entered into with the L1 tenderer. By inviting tenders only of Godrej brand of goods/stores, Clause 13.16 has not been followed.

X. Clause 13.28 again provides for simultaneously entering into Rate Contracts with more than one firm, where the same is not to be entered into with the L1 tenderer.

20. The conclusion is that the Rate Contract entered into with Godrej is not in accordance with DGS&D's own Manual. It is perhaps for this reason only that the UOI / DGS&D shied from, in their counter affidavit, quoting from their own Manual or from citing the same.

21. The counsel for UOI / DGS&D on 25th February, 2015 handed over certain extracts from the General Financial Rules, 2005 of Ministry of Finance and the recommendations of the Committee on Public Procurement on procurement through DGS&D dated 3rd October, 2012 but could not explain the applicability thereof to the subject. It is/was not even the contention of any counsel that the copy of the DGS&D Manual handed over by the learned ASG was not applicable. The counsel for UOI/DGS&D has after the close of hearing also filed a synopsis of submissions stating that DGS&D has entered into a Net Dealer Price (NDP) Rate Contract with Godrej pursuant to negotiations held with Godrej. However the same does not address the lacunas we have pointed out hereinabove. Else in the said synopsis, the contentions already noted and dealt with above have been reiterated and Rules 140, 141 and 147 of the General Financial Rules, 2005 and Clauses 3.16, 14.5, 14.6 of the Manual on Policies and Procedures for Purchase of Goods issued by the Ministry of Finance, Department of Expenditure are quoted. However, none of them are found to be negating the provisions noted hereinabove from the DGS&D Manual. In fact Clause 14.6 thereof provides for NDP Rate Contracts for automobiles, sophisticated equipment, machinery etc. However, as aforesaid no decision to include the subject goods, and for which the DGS&D even now is

ready to enter into a Rate Contract with the petitioners, in the list of sophisticated equipment/machinery where the design feature, performance parameters differ and equitable comparison of prices is not feasible, is shown.

22. In the light of the aforesaid, we do not deem it necessary to decide the plea of the petitioners of the subject goods falling in the list of items to be purchased from Small Scale Industries and in which respect we do not find either of the parties to have demonstrated any clarity.

23. The counsel for the petitioners relied on *Delite Kom Limited Vs. Government of NCT of Delhi* 150 (2008) DLT 138 (DB) and *Times Innovative Media Ltd. Vs. Delhi Transport Infrastructure Development Corporation Ltd.* MANU/DE/0766/2013 (DB). In the former, it was observed that though Godrej is a reputed and recognized company dealing in furniture including modular furniture and compactors but that does not mean that other companies which may be equally good should be excluded from consideration. It was held that the same will completely stifle private enterprise and competition. It was further held that ordinarily the contract is awarded to the lowest tenderer and finding that the Tendering Department while inviting the tenders had not considered the other manufacturers, the contract awarded to Godrej was not approved of. In *Times Innovative Media Ltd.*, on a conspectus

of a plethora of case law, the award of contract without open tendering was quashed.

24. Reference in this regard may also be made to:

- a) ***Nex Tenders (India) Private Limited Vs. Ministry of Commerce and Industry*** MANU/DE/0337/2009 where a Division Bench of this Court held that DGS&D being the business arm of the Government is expected to drive a hard bargain in public interest and the action of DGS&D of disregarding its own Manual and eliminating competition was deprecated. The conditions in which Limited Tender Enquiry can be floated were specified and finding the contract in that case to be not fulfilling the said criteria, the challenge thereto was allowed.
- b) ***Union of India Vs. Dinesh Engineering Corporation*** (2001) 8 SCC 491 where it was held that even where the spare part is required to adhere to strict standards, monopoly in favour of one supplier cannot be created without considering the spare parts offered by the other suppliers.

c) *Nagar Nigam, Meerut Vs. Al Faheem Meat Exports (P) Ltd.*

(2006) 13 SCC 382 reiterating the need to maintain transparency in grant of public contracts and the advantages of promoting healthy competition.

25. As far as the plea of Godrej, of these petitions having been filed belatedly is concerned, we do not find any merit therein. The subject Rate Contract is in force and purchases thereunder, to the prejudice of the petitioners, are possible day by day and it cannot be said that the grievance of the petitioners with respect thereto is stale.

26. We accordingly declare the impugned Tender Enquiry and the Rate Contract to be violative of DGS&D's own Manual and illegal and void. Accordingly, the same be removed from the website and this decision be communicated to all concerned to ensure that no purchases in pursuance to the said Rate Contract are made by any user department/s. We also direct the Secretary, Ministry of Finance, Department of Expenditure (Procurement Policy Division) to conduct an enquiry into the placing of the subject Tender Enquiry and entering into the subject Rate Contract, as to why the DGS&D's Manual was not abided by and how much benefit has been derived by Godrej

from the subject contract and identify the officials of DGS&D responsible therefor. The said enquiry be completed within three months and a report be filed in this Court. The file be put up when the report is received.

We also burden Godrej with cumulative costs of Rs. 30,000/- of these petitions, payable to the petitioners in equal share within one month.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

MARCH 24, 2015
‘PP’