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

+ W.P.(C) 531/2016 & CM Nos. 2193-2194/2016, 8696/2016, 9501/2016 & 16755/2016

TEJAS NETWORKS LTD & ANR

..... Petitioners

Through : Mr Parag P. Tripathi, Senior Advocate with
Mr Abhinav Mukerji, Mr Siddharth Garg,
Ms Purnima Krishna and Ms Kanika Tandon

versus

BHARAT SANCHAR NIGAM LIMITED & ORS

..... Respondents

Through : Mr Dinesh Agnani, Senior Advocate with
Ms Leena Tuteja and Mr Ishaan
Chawla for R-1/BSNL.
Ms Suparna Srivastava for UOI.
Mr Balbir Singh, Senior Advocate with
Mr Amol Sinha and Mr Rahul Kochar for R-5.
Ms Gunika Gupta for R-6.
Mr Kapil Sibal and Mr Gourab Banerji, Senior
Advocates with Mr Trinath Tadakamalla,
Mr Mrinal Ojha, Mr Dilbarshi Dutta,
Mr Siddarth Kaushik and Mr Saurav
Agarwal for Intervenor.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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19.05.2016

This writ petition was initially filed by petitioner Nos. 1 and 2. Subsequently, Sterlite Technologies Limited was added as petitioner No.3 on an application moved by Sterlite Technologies Limited.

Thereafter, Sterlite Technologies Limited moved another application seeking withdrawal from the writ petition and deletion of its name as the petitioner No.3. That application was CM No. 12772/2016, which was allowed by this Court, on 17.05.2016.

The grievance in this petition is with regard to the network for spectrum tender CA/CNP/NFS-DWDM/T-455/2013 dated 20.11.2013. By virtue of the main prayer, a declaration has been sought to the effect that the bids of the respondent Nos. 5 and 6 under the said tender be declared as being in violation of the notifications dated 05.10.2012 and 12.06.2013 representing the Preferential Market Access Policy and the addendum issued on 13.12.2013 as well as the corrigendum dated 03.12.2014 and clarifications by the respondent No.1 issued on 07.04.2014 and the respondent No. 3's clarification dated 03.12.2015 with regard to the essential conditions of the tender.

The primary issue that has arisen before us, in view of the withdrawal of the petitioner No.3, is with regard to the locus of the remaining petitioners to challenge the subject tender. The petitioners and, in fact, the petitioner No.1 is the Original Equipment Manufacturer (OEM) which tied up with Sterlite Technologies Limited and it was the latter which was the bidder in the subject tender.

The respondents submit that once the bidder has walked out, the present petition cannot be maintained by the remaining petitioner Nos. 1 and 2. We agree with the submission made by the learned counsel for the respondents that unless and until the bidder continued to be a party to the present proceedings, the same cannot be maintained by the petitioner No.1 (and/or by petitioner no.2), which is only an OEM, which had earlier tied up with Sterlite Technologies Limited.

Mr Parag Tripathi, the learned senior counsel arguing on behalf of the surviving petitioners, submitted that it still has an interest in the matter as it was objecting to the award of the tender to the respondent No.5 and was praying for cancellation of the tender

process which, according to him, was in violation of the Preferential Market Access Policy and other documents referred to above. However, we feel that unless and until the bidder was pursuing the present petition, the OEM supplier, which was behind the bidder, would not have a *locus standi* in this matter. We are making it clear that we have not examined the merits of the challenge raised in the petition.

In view of the fact that the petitioner Nos. 1 and 2 do not now have any *locus standi* in the present petition, the writ petition is dismissed. All other applications stand disposed of.

BADAR DURREZ AHMED, J

**MAY 19, 2016
SR**

SANJEEV SACHDEVA, J