THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 31.05.2016

+ **W.P.(C) 4575/2016 & CM 19058/2016**

M/S. ACER INDIA PVT. LTD ... Petitioner

versus

PUNJAB NATIONAL BANK & ORS ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sanjeev Sindhwani, Senior Advocate with Mr Sanyat Lodha, Ms Sanjana Saddy and Ms Aakashi Lodha

For the Respondent No.1 : Ms Seema Sharma with Mr Vakul Sharma

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition pertains to the Request For Proposal (RFP) for supply, installation, configuration and maintenance of desktops and peripherals for the year 2016 issued by the Punjab National Bank, New Delhi (Information Technology Division).

2. The petitioner is aggrieved because the petitioner has not been permitted to participate in the reverse auction on the ground that its bid is in

violation of Clause 2(ix) of the Instruction to Bidders. The said clause reads as under:-

> "2 **ELIGIBILITY CRITERIA**:
>
> xxxx xxxx xxxx xxxx
>
> (ix) Bidders, who have not satisfactorily completed any of the earlier contracts with the Bank and/or who have been debarred by the Bank or any other Bank during last three accounting years from participating in future tenders, will not be eligible for this tender. Bidder to submit an undertaking in this regard.
>
> xxxx xxxx xxxx xxxx"
>
> (underlining added)

3. The entire petition rests on the interpretation to be placed on the expression "*who have been debarred by the Bank or any other Bank during last three accounting years from participating in future tenders*". It is an admitted position that the petitioner was debarred by the Central Bank on 05.01.2012 for a period of two years. On 18.05.2015, when this matter came up before us for the first time, we were, *prima facie*, of the view that the refusal of permission to participate in the reverse auction was contrary to the above mentioned instruction to bidders. What weighed with us at that point of time was the submission made by the learned counsel for the petitioner that the petitioner had been debarred on 05.01.2012 and that was beyond the period of preceding three accounting years. But, this *prima*

facie view of ours, on further consideration of the matter and after hearing the counsel for the parties in detail, does not hold good.

4. The learned counsel for the respondent submitted that the said Clause 2(ix) was inserted with the object of ensuring that bidders who were suffering a debarment during the last three accounting years would not be eligible for participating in the present RFP.

5. On the other hand, the learned counsel for the petitioner submitted that the only interpretation that can be given to Clause 2(ix) is that the date on which the debarment order is passed should not fall within the last three accounting years. He further submitted that the minutes of the meeting of the Technical Evaluation Committee held on 04.05.2016 revealed that the Committee itself felt that insofar as the current RFP process was concerned, the debarment was not applicable to the petitioner in view of the eligibility criteria of the RFP. Detailed references were made by the counsel on both sides to the minutes of the meeting held on 04.05.2016. As such, it would be necessary to reproduce the said minutes in entirety:-

"**Minutes of Technical evaluation committee for Supply, Installation, Configuration and Maintenance of Desktops and Peripherals for the year 2016**

GM IT vide note dated 15.03.2016 constituted committee of following officers to evaluate the technical bids submitted by the bidders in response to our tender for Supply, Installation, Configuration and Maintenance of Desktops and Peripherals for the year 2016.

1. Shri Shailender Singh Bora , AGM
2. Shri M K Morolia, Chief Manager
3. Shri Charanjeet Singh Arora, Chief Manager
4. Shri Prabhat Shukla, Chief Manager

Following bidders have submitted their bids in response to our tender:

A. HP India Sales Pvt. Ltd
B. Acer India Pvt Ltd.
C. HCL lnfosystems Ltd.

Meeting of Technical Evaluation Committee was held on 13.04.2016 for evaluation of technical bids submitted by the bidders and found that some documents/clarification required from bidder for taking the final view. Accordingly, bidders were requested to submit documents/clarification.

After submission of documents/clarification by bidders committee meeting again held on 30.04.2016. In the meeting **Department informed to committee that it has come in the notice of the bank that one of the bidder's i.e. Acer India Pvt. Ltd. was debarred by the Central Bank of India on January 5th 2012 for a period of two years for not fulfilling contractual obligations. On taking up the matter with Central Bank of India, the concerned Bank vide mail informed** that our Bank had blacklisted M/s Acer India Pvt Ltd on January 5, 2012, due to their failure to fulfill the contractual obligations.

Matter was taken up by the department with M/S Acer India Pvt. Ltd who informed that said debar was never implemented and submitted copy order placed by the

Central Bank after 5th January 2012. The committee desired that Bank may seek further confirmation from Central Bank upon M/s Acer India Pvt Ltd views.

Accordingly department took up the matter with Central Bank of India who vide mail dated 04.05.2016 informed the bank as under (F/A):

"We had informed you vide our mail dated April 20, 2016 that M/s Acer India Pvt Ltd was blacklisted on January 5, 2012, due to their failure to fulfill the contractual obligations and debarred from participating in any tender process for procurement of Hardware for a period of two years.

Since procurement of hardware is decentralized in our Bank, there is a possibility of issuance of .some PO's from our Regional Offices due to ignorance/non-receipt of communication regarding debarment.

Corporate office neither issued any PO during the period to the vendor nor the vendor participated in any tender process *initiated* at Corporate *level, as per our records,"*

All the above facts were again placed before the technical evaluation committee in its meeting held on 04.05.2016 after deliberating on all the facts response submitted by M/s Acer India Pvt. Ltd. and response received from Central Bank of India, committee observed that in current RFP Process said debarment is not applicable terms of eligibility criteria of RFP.

Committee observed that M/s Acer India Pvt. Ltd concealed the fact of debarment and submitted false undertaking that they have not debarred by any Bank during the last three year. On basis of false undertaking M/s Acer India Pvt Ltd got empanelled in last two RFPs from 01/11/2013 to 31st March 2016.

On the basis of bid/confirmation submitted the above three bidders committee observed that all of them are meeting terms and condition of current RFP process.

Committee recommends that on the basis of false undertaking submitted by the bidder M/s Acer India Pvt Ltd may be technically disqualified for current RFP process and other 2 bidders i.e. M/S HP India Sales Pvt, Ltd and HCL Infosystems Ltd be technically qualified for next round of bidding process i.e. commercial evaluation.

Further committee members confirm that none of them have any personal interest in the above mentioned vendors.

Sd/-	Sd/-
Prabhat Shukla Chief Manager	Chranjeet Singh Arora Chief Manager
Sd/-	Sd/-
M. K. Morolia Asstt. General Manager	S S Bora Chief Manager”

6. On going through the above minutes, it is apparent that the debarment order passed by the Central Bank on 05.01.2012 was coming in the way of the petitioner and, therefore, the petitioner was asked to explain as to why they be permitted to participate in the RFP process. The explanation given by the petitioner was that the debarment order was never implemented and as an example of that, they submitted copies of orders

placed by the Central Bank on the petitioner even after 05.01.2012. It is evident from the above minutes that because of the stand taken by the petitioner, pursuant to the meeting of the Technical Evaluation Committee held on 30.04.2016, the Committee required the respondent to seek further confirmation from the Central Bank in respect of the views expressed by the petitioner that the debarment was really never implemented. Consequently, the respondent took up the matter with the Central Bank of India, which, by an e-mail dated 04.05.2016, informed the bank that although the petitioner had been debarred by virtue of the debarment order dated 05.01.2012, since procurement of hardware was decentralized, there was a possibility of issuance of some purchase orders from regional offices due to ignorance/non-receipt of the communication regarding the debarment. It was further clarified that the Corporate Office had neither issued any purchase order during the period of debarment to the vendor (the petitioner herein) nor did the petitioner participate in any tender process initiated at the corporate level.

7. From this, it is clear that the petitioner's stand that the debarment order was not acted upon or was given up by the Central Bank of India, is not correct. It is in this background that the Technical Evaluation

Committee observed that the petitioner may be technically disqualified on the basis of the false undertaking submitted by the petitioner for the current RFP process. Of course, there are observations in the minutes of the meeting held on 04.05.2016, which appear to aid the petitioner, but those observations, in our view, are more in the nature of deficiencies of language. We take this position because if the meaning of Clause 2(ix) was that only the date of debarment was to be considered, then the issue raised in the earlier meetings of the Technical Evaluation Committee and the occasion for calling for an explanation from the petitioner, would not have arisen in the first instance. Because, clearly, the date of debarment (05.01.2012) was beyond the period of three accounting years and if that was the only consideration to be taken up, then the issue of seeking a clarification from the petitioner or from the Central Bank would not have arisen at all. There is another reason as to why we agree with the submission made by the learned counsel for the respondent that the meaning and intent behind Clause 2(ix) that a bidder should not be suffering a debarment order during the three preceding accounting years is correct, and that is that if the debarment order, which was issued on 05.01.2012 was not for two years but for five years, then the petitioner could not have participated in the present RFP process as the five-year period would end only on 04.01.2017. But, if the argument of the learned counsel for the petitioner were to be accepted, even though the debarment would be alive till 04.01.2017, merely because the order of debarment was passed on 05.01.2012, that is, prior to three preceding accounting years, the petitioner would be entitled to participate in the current RFP process. That would be clearly wrong. Therefore, the argument of the learned counsel for the petitioner that it is only the date of debarment which is to be seen and not the entire period of debarment, is untenable.

8. In the facts of the present case, we find that the period of debarment ended on 04.01.2014, which falls in the accounting year 2013-14, which is within three years prior to the year 2015-16 and, therefore, the action taken by the respondent in not permitting the petitioner to participate in the reverse auction, cannot be faulted.

9. Before we conclude, we may point out that the learned counsel for the petitioner submitted that the blacklisting order dated 05.01.2012 has been challenged by the petitioner in the High Court of Judicature at Bombay. We are making it clear that the present decision will not come in the way of the petitioner in those proceedings.

The writ petition is dismissed. There shall be no order as to costs. The interim order stands vacated.

Dasti under the signature of the Court Master.

BADAR DURREZ AHMED, J

MAY 31, 2016 **SANJEEV SACHDEVA, J**
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