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

+ **W.P.(C) 2764/2017, C.M. APPL.12026-12027/2017**

KLINGELNBERG INDIA PRIVATE LIMITED Petitioner
Through : Sh. Sahil Mongia, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through : Dr. Sarabjit Sharma with Ms. Sunaina
Pasricha, Advocates, for Respondent Nos. 1 and 2.
Sh. Viraj Kadam, Advocate, for Respondent No.3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

ORDER

% **10.08.2017**

The petitioner is aggrieved by the rejection of its tender for supply of CNC Gear Grinding Machine; the Central Organisation for Modernisation of Workshops (COFMOW) of the Ministry of Railways had issued the tender.

The petitioner was one of the bidders in the process and had participated in the Notice Inviting Tender (NIT) by lodging its tender. Its grievance is that COFMOW did not evaluate the bids correctly and that there was a substantial deviation to the extent of 40% by the third respondent – the successful bidder – NILES Werkzeugmaschinen GmbH, [hereafter “NILES”]. NILES was awarded the contract eventually on 06.01.2017 and the work order was issued. The petitioner’s bid was rejected on 29.07.2016.

This Court had entertained these proceedings essentially upon the allegations levelled by the petitioner with respect to the non-compliance of

the third respondent's bid and upon existence of several deviations. The Court however, notices that the petitioner's bid itself was declared as L2 and, therefore, it was aware that NILES was to be the successful tenderer on 29.07.2016. Nevertheless, it chose to approach this Court later - in March 2017.

The original records pertaining to the tender and their evaluation were produced today during the course of the hearing. COFMOW's reply is on the record. It reveals that the contract in this case was entered into by the parties sometime on 22.02.2017. The petitioner was aware of the rejection of its tender in July 2016 itself. The petitioner's allegations led to the initiation of an internal vigilance inquiry. However, the fact remains that the contract with NILES was entered into by the second respondent consequent upon the award of the tender in January 2017.

These circumstances, in the opinion of the Court, are sufficient to reject the relief claimed in this petition. At the same time, the Court is conscious that the vigilance inquiry has not been completed. In the circumstances, the respondents are directed to complete the inquiry within four weeks and, if needed, take consequential action in accordance with the terms of the contract. COFMOW shall also ensure that the ultimate outcome of the inquiry is intimated to the petitioner, and if it is in any way adverse to the third respondent, to NILES as well.

The writ petition is disposed of in the above terms.

S. RAVINDRA BHAT, J

S.P.GARG, J

AUGUST 10, 2017/ajk