$~35

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

\+ **W.P.(C) 9542/2017**

MANIPAL TECHNOLOGIES LIMITED ..... Petitioner

Through: Mr. V. Shekhar, Senior Advocate with Mr D.K. Thakur, Mr Pawan Kr. Sharma, Mr Shashank Shekhar and Mr Prithviraj Singh, Advocates.

versus

FOOD CORPORATION OF INDIA & ORS ..... Respondents

Through: Mr Manoj and Ms Aparna Sinha, Advocates for R-1 to R-3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **03.11.2017**

1. The petitioner has filed the present petition, *inter alia,* impugning a letter dated 11.09.2017 (hereafter 'the impugned letter'), whereby the contract awarded by respondent no.1 to the petitioner, was terminated.

2. Briefly stated, the relevant facts are as under:

2.1 On 31.08.2016, the respondent (FCI) had invited tenders for providing consultancy services for recruitment of personnel in various positions in FCI. The petitioner responded to the aforesaid advertisement and submitted its bid, which was accepted and by a letter dated 06.02.2017 the petitioner was awarded the contract for providing the consultancy services (hereafter 'the Contract').

2.2 Thereafter, a complaint was made against the petitioner to the effect that the petitioner was disqualified from participating in the tender as its bid security had been forfeited by another institute; namely, APJ Abdul Kalam Technological University, Kerala (hereafter 'KTU'). FCI concluded the said complaint to be merited and this led FCI terminate the contract by a letter dated 11.09.2017, which is impugned herein.

2.3 It is the case of the petitioner that it did not made any incorrect statement in its bid document as it had not incurred the disqualification as specified in the tender document. This is disputed by FCI.

3. Before proceeding further, it would be relevant to refer to the disqualification condition- that is, clause 10.2 of the tender documents - which is set out below:-

> "10.2 Bidder whose Earnest Money Deposit and/or Security Deposit have been forfeited by the FCI or Central/State Govt. or any Central/State PSU/Statutory Corporations, during the last five years, for beach of any terms and conditions will be ineligible."

4. FCI also alleged that the petitioner was guilty of concealment and thus, had also violated clause 16.2 of the bid documents. Clause 16.2 of the bid documents reads as under:-

> "16.2 The onus of ensuring fulfillment of the eligibility condition would be on the Bidder and any Bid, if subsequently found ineligible would be summarily rejected.
>
> If any of the documents are found to be forged / fabricated at any stage or any concealment on the part of the Bidder is found at any stage, the FCI shall have the right to take action for banning the bidder from

> participation in any tenders of FCI apart from initiating legal action under the applicable law for causing any loss/damage and to disqualify/summarily terminate the Contract without prejudice to any other rights or remedies that the Corporation may have under the Contract and Law.
>
> Price Bid as submitted by the Bidder in BOQ format of only those bidders who qualify in the Technical bid would be opened.
>
> The list of documents to be submitted along with Bid is at **Annexure - VI**."

5. The undisputed facts are that the petitioner had submitted its offer pursuant to a tender invited by KTU for Examination Management System. It is alleged that the petitioner had after participating in the bidding proces sought to withdraw its bid. In view of the same, KTU sought to forfeit the bid security submitted by the petitioner and by the letter dated 27.01.2016 informed the petitioner that "*it is decided to forfeit the Bid security Submitted by you*".

6. Aggrieved by the same, the petitioner made certain representations to KTU and since the same were not being considered, the petitioner moved to the Kerala High Court by way of a writ petition, being W.P.(C) 12833 of 2017. The said petition was disposed of by the Kerala High Court by a Judgment dated 11.04.2017, whereby the Court directed KTU to consider the representation submitted by the petitioner within a month of the date of receipt of the copy of the said judgment. It is stated that pursuant thereto the petitioner's representation was considered and rejected. This was communicated to the petitioner by a letter dated 30.05.2017. The relevant

extract of the said letter is quoted below:-

> "As per the reference cited, M/S Manipal Technologies Limited was selected as L1 bidder in the tender floated for Examination Management System for the University, and vide letter 3rd cited M/S Manipal Technologies Limited was invited for demonstration for awarding the contract. However, vide ref 4 th cited, M/S Manipal Technologies Limited expressed their inability to complete the work within the stipulated timeframe and requested to cancel the participation.Then according to the conditions in the tender document, "The Bid Security (including the interest) will be forfeited when the bidder withdraws or modifies its bid after opening of bids", the EMD amount was forfeited and the matter was informed to M/S Manipal Technologies vide ref 5th cited.
>
> Further, as per the direction of Hon'ble High Court of Kerala in W.P(C) No 12883 of 2017(1), a discussion was held with the representative of M/s Manipal Technologies Limited on the matter. Accordingly, it is hereby informed that the EMD submitted by M/S Manipal Technologies Limited is forfeited as per the tender conditions since M/S Manipal Technologies requested to cancel their participation and expressed their inability to complete the work within the stipulated time frame only after the opening of the bid."

7. The petitioner admits that the disputes between the petitioner and KTU were not disclosed by the petitioner at the time of submission of the tender; however, the petitioner claims that at the time when the tender was submitted, its bid security had not been forfeited. According to the petitioner, the said forfeiture took place subsequently when the communication dated 30.05.2017 was received by it.

8. According to FCI, the above contention is incorrect. FCI contends that

the petitioner's bid security had been forfeited at the time of submission of the tender and the same had been communicated to the petitioner on 21.07.2015. It is only pursuant to the orders passed by the Kerala High Court on 17.04.2017 that representations made by the petitioner were considered and rejected by KTU.

9. This Court is *prima facie* of the view that the petitioner had lost access to the Earnest Money Deposit (EMD) provided to KTU on KTU deciding to forfeit it. The petitioner had made representations against such decision and had also agitated the issue before the Kerala High Court. In the circumstances, it was apposite for the petitioner to make a full disclosure. It was not apposite for the petitioner to take a convenient view that there was no forfeiture. The contention that KTU had not forfeited the EMD at the material time when the petitioner had submitted its bid, is - prima facie - not persuasive. Concededly, KTU was not even entertaining the representations made by the petitioner; they were considered pursuant to the directions of the Kerela High Court issued subsequently.

10. Having stated the above, this Court is also of the view that this controversy need not be finally examined in this petition. As is obvious from the facts narrated above, the matter relates to a contractual arrangement between the petitioner and FCI. The question whether termination of the Contract is legal or wrongful is a matter of contractual disputes which is purely in the realm of private law and has no element of any public law. Thus, this court is of the view, that it would not be apposite to examine such disputes in this petition.

11. It is also relevant to note that the Contract between the parties is a determinable one and what the petitioner effectively seeks by challenging the termination thereof, is a specific performance of the Contract. It is trite law that if such relief, is otherwise unavailable by virtue of the Specific Relief Act, 1963 the same would not be granted by the court while exercising jurisdiction under Article 226 of the Constitution of India.

12. In view of the above, the present petition is dismissed leaving it open to the petitioner to agitate its grievance in an appropriate proceeding. No order as to costs.

VIBHU BAKHRU, J

NOVEMBER 03, 2017
RK